

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

SIX-DAY TO FIVE-DAY STREET DELIVERY
AND RELATED SERVICE CHANGES, 2010

Docket No. N2010-1

INITIAL BRIEF OF THE UNITED STATES POSTAL SERVICE

Respectfully submitted,

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I. Statement of the Case.

When the United States Postal Service determines that there should be a change in the nature of postal services which will generally affect service on a nationwide basis, it is required by title 39, United States Code section 3661(b) to request that the Postal Regulatory Commission issue an advisory opinion on the service change, and to submit that request within a reasonable time prior to the effective date of the proposed service change. If implemented, the changes within the scope of the Request in this docket potentially affect every sender and recipient of mail in the United States.

As this Initial Brief explains, the Postal Service has presented overwhelming reliable, probative and substantial evidence to support an advisory opinion from the Commission that the service changes under review in this docket conform to the policies of title 39, United States Code. The plan under review represents prudent, responsible stewardship at a time of great financial instability. The Postal Service respectfully submits that, as will be demonstrated below, the information provided by parties opposed to the service changes is lacking in sufficient reliability, probity and substantive quality to warrant a contrary conclusion. The Commission must ignore appeals that it wait and hope for legislative prescriptions to relieve some of the short-term or long-term financial instability that is stressing the Postal Service. Stewardship of the Postal Service requires a recognition of the past coupled with a vision to adapt in ways that can help to preserve the long-term viability and relevance of the postal system. The needs of postal customers are changing. If the Postal Service is to remain viable

and relevant, it must be permitted to implement operational and service changes consonant with those needs.

Responsible management of the national postal system involves the pursuit of various service objectives in an operationally efficient and economical manner. Developments in electronic communications technology and their widespread application are radically altering the Postal Service's role in the communications and delivery service markets. As a result, steady increases in mail volume and revenue that historically funded the operations of the postal system in recent decades have been replaced by precipitous volume declines, and expenses greatly in excess of revenues. These trends have been intensified by the downturn in the general economy over the past several years. Even as the stair-step recessionary trends appear to recede, there is no basis for expecting a reversal of the underlying non-cyclical trends in postal volumes, revenues and finances.

The number of postal delivery addresses grows each year, continually adding to fixed costs and contributing to the sharp decline in the average number of mail pieces per delivery stop. Changes in the mail mix have increased the proportion of pieces that contribute less revenue to cover postal costs. Despite aggressive cost-cutting, Postal Service costs continue to exceed revenues significantly and the Postal Service is perilously close to its statutory borrowing limit. All measures that can significantly reduce the financial instability of the Postal Service are being and must be considered, including limited reductions in service that can bring about significant cost savings, while maintaining service at

adequate levels.

The Postal Service values the preferences of its customers and gives them serious consideration in making service policy determinations. Accordingly, it has undertaken extensive outreach and has conducted rigorous market research to assess the potential impact of the service changes under review in this docket. Implementation of its plan to change regular street address mail delivery from six days to five days per week and to make other associated service changes would permit the Postal Service to continue to bind the nation together through the personal, educational, literary and business correspondence of the people, but to do so in a more operationally efficient manner. The continuation of Saturday retail and bulk mail entry operations, as planned, would be consistent with the mandate that the customers have ready access to essential postal services and that adequate service be maintained. The exemption of Express Mail from any of the changes being planned and the retention of Saturday delivery to Post Office boxes preserves channels for the expeditious collection, transportation, and delivery of important letter mail. Deferral of some mail collection and processing activities from Saturday to Monday would be consistent with reasonable economies of postal operations and maintain service at adequate levels. As explained below, the Postal Service has presented compelling evidence in support of its request. The parties have offered insufficient evidence to warrant advice from the Commission that fails to support the request. If permitted by Congress, the Postal Service intends to act this fiscal year. The time for constructive and supportive advice is now.

II. Procedural History.

On March 30, 2010, the Postal Service filed with the Postal Regulatory Commission a Request for an Advisory Opinion on a plan to generally eliminate the regular delivery of mail to street addresses on Saturdays and to implement other related service changes. In support of this Request, the Postal Service submitted the written direct testimony of eleven expert witnesses, including five executive Officers of the organization. Their testimonies were accompanied by 12 Library References. Beginning March 31, 2010, a total of 32 notices of intervention were filed by interested parties. On April 1, 2010, the Commission issued Order No. 436 which provided public notice of the filing of the Request, initiated this docket, appointed a representative for the public's interests, and established a date for a pre-hearing conference. Intervenors initiated written discovery on the Postal Service's direct testimony that same day. The Commission convened the pre-hearing conference on April 27, 2010, and issued a procedural schedule the next day. Presiding Officer's Ruling No.N2010-1/1.

During discovery, the Postal Service's direct case was supplemented by the filing of an additional 18 Library References and responses to hundreds of formal written interrogatories and document requests from intervenors and the Commission. Hearings were held in Washington DC on July 14, 16, 20-21, 2010 for entry of the Postal Service's direct testimony, associated library references, and designated interrogatory responses into evidence, and for oral cross-examination of the Postal Service's direct testimony witnesses.

Prior to these hearings, the Commission conducted one-day field hearings related to the planned service changes on dates in May and June, 2010 in the following cities: Las Vegas NV, Sacramento CA, Dallas TX, Memphis TN, Chicago IL, Rapid City SD, and Buffalo NY. At each field hearing, the Commission received testimony from and directed questions to panels of witnesses who were either recruited by or recommended to the Commission. In addition, members of the general public, comprised mainly of current and retired postal employees in attendance, were permitted to offer comments to the Commission.

On August 2 and 3, 2010, the following intervenors filed a total of 10 pieces of written rebuttal testimony challenging or expressing concern about the planned service changes: Medco Health Solutions, the National Association of Letter Carriers, the National Newspaper Association, and the Public Representative. Their testimony was supplemented by a cumulative total of 22 Library References. The Postal Service and intervenors were given an opportunity to direct written interrogatories to each of these witnesses. Hearings were held in Washington DC on September 13, 14 and 16, 2010 for the entry of this testimony and designated interrogatory responses into evidence, as well as oral cross-examination of intervenor witnesses. On September 23, 2010, the Postal Service filed the surrebuttal testimony of four expert witnesses. The hearing for oral cross-examination of that testimony was conducted on October 4, 2010.

III. The Statutory Scheme Demands Compliance With Procedural Due Process Requirements.

The Postal Service values constructive advice regarding service changes that the section 3661 process, when faithfully executed, is intended to foster. The Postal Service considers it critical that the opinion issued at the conclusion of this docket reflects strict adherence to applicable statutory procedural requirements. Accordingly, in this section of its brief, the Postal Service summarizes those requirements and strongly encourages the Commission to ensure that its advisory opinion meets the procedural requirements embedded in the law and in its rules.

A. The Timing of the Request Satisfies the Requirements of 39 U.S.C. § 3661.

The changes in service that the Postal Service has submitted to the Commission for review in this docket are the most significant changes in the nature of postal services contemplated since the administrative review process in section 3661 was established as part of the 1970 Postal Reorganization Act. That process recognizes the primacy of postal management in determining the terms and conditions of postal services. However, section 3661(b) requires that a reasonable time before implementing any substantially nationwide changes in service, the Postal Service must first request a non-binding advisory opinion from the Postal Regulatory Commission regarding whether the changes would conform with applicable policies of title 39 United States Code.¹ The filing of the

¹ The Commission's rules interpret section 3661(b) to require that the advisory opinion request be filed at least 90 days before the scheduled implementation date for the service changes. 39 C.F.R. § 3001.72. The request in this docket

request in this docket demonstrates the Postal Service's respect for the will of Congress, as interpreted by the Commission's Rules of Practice and Procedure, that the Commission be given a reasonable opportunity to offer such advice. The Postal Service greatly appreciates the potential constructive value that may be derived from the Commission's faithful exercise of its advisory responsibilities.

B. The Relevant Procedural Due Process Requirements Are Clear.

Given the magnitude of the service changes under review here, it is critical that the Postal Service and interested observers have faith that the Commission's advisory opinion, in all material respects, is the product of a process that satisfies the strict procedural requirements established by Congress in section 3661(c). Otherwise, any advisory opinion offered by the Commission at the conclusion of this docket would be fatally flawed, and the Postal Service and intervenors will have exhausted considerable resources for naught.

Unfortunately, the circumstances of this docket compel the Postal Service to express serious concerns about whether the Commission's advisory opinion will comply with the procedural requirements mandated by Congress and affirmed by the courts.

In accordance with section 3661(c), the Commission is required to provide the Postal Service, users of the mail, and its Public Representative an opportunity for a hearing after receiving an advisory opinion request regarding a

was filed on March 30, 2010, and explicitly emphasized that the changes would not be implemented until some time in fiscal year 2011, which commenced more than 180 days later on October 1, 2010. Docket No. N2010-1, USPS Request at 10 (March 30, 2010). Thus, the request was filed in compliance with section 3661(b).

nationwide service change. Section 3661(c) further explicitly requires that any such hearing be conducted in a manner consistent with the Administrative Procedure Act (APA), 5 U.S.C. §§ 556 and 557. In pertinent part, section 556(d) requires the Commission to base its advisory opinion on “reliable, probative, and substantial evidence.” This subsection also states that:

A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, *and to conduct such cross-examination as may be required for a full and true disclosure of the facts.*

(Emphasis added.) Thus, for the Commission’s advisory opinion to be lawful, the Commission must ensure that the foundation for that opinion is limited to evidence that not only meets specific substantive criteria, but that also was subject to examination by the parties in accordance with specified procedural due process requirements.

The Commission’s Rules of Practice and Procedure exhibit similar clarity in distinguishing the status of parties, limited participators and commenters; any information they provide to the Commission relevant to the issues in a pending docket; and whether that information is accorded evidentiary status for purposes of developing an advisory opinion. See 39 C.F.R. §§ 3001.20, 20a and 20b. Information presented to the Commission relevant to issues in a docketed proceeding can have evidentiary status on par with testimony submitted by parties and limited participators only if such information is “subject to cross-examination *on the same terms applicable to that of formal participants*” as required by 39 C.F.R. § 3001.20a(c). (Emphasis added.) Otherwise, the Commission is required to maintain such material in such a manner that it is

“segregated from the evidentiary record” 39 C.F.R. § 3001.20b(c).

C. The Commission Is Barred From According Evidentiary Status to the Docket No. N2010-1 Field Hearing Statements and Testimony

In Docket No. N2010-1, the Commission established two types of hearings to receive testimony. For purposes of discussion below, they are designated either as the “Washington DC hearings” or the “field hearings.” For each type of hearing, the Commission established materially different sets of procedures and limitations on the roles of participants. As explained below, these procedural distinctions govern the extent to which the Commission can base its advisory opinion on information gathered at each type of hearing and, as a matter of law, bar the Commission from relying on any of the information gathered at its field hearings.²

The Washington DC hearings. The Postal Service filed the written direct testimony of 11 expert witnesses concurrently with its advisory opinion request on March 30, 2010. From that date until evidentiary hearings were convened in July, 2010, Docket No. N2010-1 intervenors and the Public Representative were permitted to conduct discovery in the form of written interrogatories and requests for production of documents in accordance with 39 C.F.R. §§ 3001.26 and 3001.27. At these evidentiary hearings, intervenors and the Public Representative were permitted to conduct oral cross-examination of the Postal Service’s witnesses. See Docket No. N2010-1, Transcript Volumes II through VI. In early August, these intervenors were permitted to file written rebuttal

² Such information has the same status of other public comments segregated from the evidentiary record in accordance with 39 C.F.R. § 3001.20b(c).

testimony which was subject to discovery through written interrogatories and document production requests. This discovery was followed by hearings in mid-September 2010 at which the intervenor witnesses were subject to oral cross-examination by the Postal Service and other parties. See Tr. Vol. VIII through X. Finally, the Postal Service filed written surrebuttal testimony on September 23, 2010, which was subjected to oral cross-examination by the parties in a hearing on early October 4, 2010. See Docket No. N2010-1, Tr. Vol. 11. In each round of Washington DC hearings, the parties' witnesses submitted written testimony that was subject to written and/or oral cross-examination by other parties, as well as by the Commission.³

The field hearings. Before conducting the Washington DC hearings, the Commission conducted field hearings in Las Vegas NV (May 10, 2010), Sacramento CA (May 12, 2010), Dallas TX (May 17, 2010), Memphis TN (May 19, 2010), Chicago IL (June 21, 2010), Rapid City SD (June 23, 2010), and Buffalo NY (June 28, 2010). At each of these field hearings, the Commission arranged typically for two or three panels of witnesses (with three or four witnesses per panel) to submit written and/or oral statements under oath.⁴ Any

³ At the September 16, 2010 Washington DC hearing, the Commission received written and oral statements by United States Senators Lisa Murkowski (Alaska). Docket No. N2010-1, Tr. Vol. X at 2813. Similarly, at the October 4, 2010 Washington DC hearing, the Commission made arrangements to accept a written statement from United States Senator Daniel Akaka (Hawaii). Tr. Vol. 11 at 3307-08.

⁴ At each field hearing, at least one Postal Service manager served as a panel witness. Otherwise, generally, most of the witnesses, or organizations that they represented, were not parties or participants in Docket No. N2010-1, within the meaning of 39 C.F.R. 3001.5(g) and (h). Under long-standing Commission

written statements submitted by panel witnesses were made available to the Postal Service and interested parties on the day of the hearing immediately before it commenced. The panel witnesses presented oral summaries of their written statements to the Commission and were subjected to questions from Postal Regulatory Commissioners in attendance. Also, in the final portion of each field hearing, other interested members of the public were invited to offer oral statements of two-to-three minutes duration. These public witnesses were not under oath and virtually none of them were questioned by the Commission. More importantly, the Commission did not permit written or oral cross-examination of the panel witnesses or public witnesses by the Postal Service, any Docket No. N2010-1 intervenors or its Public Representative.⁵

At the initial field hearing, the Commission's Presiding Officer stated that:

The Commission procedures provide for public, on-the-record hearings to analyze and cross examine the Postal Service's proposal and its supporting evidence. During the process, mail users and interested members of the public may offer supporting or opposing views both *informally* and as part of *the more formal* technical presentations.

...

[T]hese field hearings are designed to *supplement* the formal hearings we have in Washington, D.C.

Docket No. N2010-1, Las Vegas NV Field Hearing Transcript at 4. (May 10, 2010). (Emphasis added.) However, at the second field hearing, the Presiding Officer indicated that the field hearing:

practice and procedure, written discovery requests may only be directed by participants to other intervening participants. See 39 C.F.R. § 3001.27(a).

⁵ At the June 21, 2010 Chicago IL field hearing, United States House of Representatives member Danny Davis (7th District, Illinois) addressed the Commission with oral comments before it received testimony from the first panel of witnesses. Docket No. N2010-1, Chicago IL Field Hearing Transcript at 8.

witnesses' testimony and responses to any questions from the Commission will become part of the *evidentiary record* of this case. Other participants will have the opportunity to review the transcripts of this hearing and offer comments if they so choose during the rebuttal phase of this case.

Sacramento CA Field Hearing Transcript at 10. (May 10, 2010). (Emphasis added.) *Accord*, Presiding Officer's Ruling No. N2010-1/26, fn. 3 (August 23, 2010), where, without acknowledging its initial designation of field hearing testimony as *informal*, the Commission affirmed its eventual declaration that the field hearing testimony was to be accorded full evidentiary status and that participants at the Washington DC hearings would be permitted to respond to field hearing witness statements by filing written testimony that "rebutted, clarified or commented" on it during the rebuttal phase of the case.⁶

With all due respect, the Commission's belated invitation to rebut, clarify, or comment on the field hearing testimony does not elevate that testimony to a status above "the informal expression of views" within the meaning of 39 C.F.R. § 3001.20b. Persons who testified at the various field hearings were shielded from cross-examination by the Postal Service, the intervenors and the Public Representative. By and large, the field hearing panel witnesses were persons who declined to become either a Docket No. N2010-1 "party" within the meaning of 39 C.F.R. § 3001.20 or a "limited participator" under the terms of 39 C.F.R. § 3001.20a. If it was the Commission's intent to elevate any of the field hearing testimony to formal evidentiary status on par with testimony submitted by parties or limited participators, the Commission's own rules make clear that such a result

⁶ *Compare*, Docket No. N2010-1, Las Vegas NV Transcript at page 10, lines 7-19 (May 10, 2010) with Sacramento CA Transcript at page 10, lines 19 to page 11, line 5 (May 12, 2010).

is permitted only if such testimony is “subject to cross-examination *on the same terms applicable to that of formal participants.*” See 39 C.F.R. § 3001.20a(c). (Emphasis added.) When it elects to deny an opportunity for cross-examination of field hearing witnesses, the Commission is required to maintain the transcripts of those hearings in such a manner that they are “segregated from the evidentiary record” 39 C.F.R. § 3001.20b(c).

Notwithstanding its rules, the Commission is required by Congress to follow the requirements of APA section 556(d) and offer the Postal Service, the intervenors and its own Public Representative an opportunity to conduct “such cross-examination of that testimony as may be required for a full and true disclosure of the facts.” But no such opportunity was extended and no such cross-examination – written or oral – was permitted in relation to the field hearing testimony. The Commission’s eventual offer that Docket No. N2010-1 parties would be permitted to file rebuttal testimony in the Washington DC hearings *commenting* on the field hearing panel witness testimony is no substitute for adversarial cross-examination of field hearing testimony rife with conclusory assertions regarding the merits of the planned service changes and allegations about their potential impact on customers, but devoid of any supporting data, or other foundational materials for analysis. Moreover, the Commission’s invitation to rebut such field hearing testimony is hollow if the Postal Service and Docket No. N2010-1 intervenors do not first have the opportunity to examine the bases for and obtain clarification or explanation of various claims and conclusions contained in that testimony.

As explained above, the field hearings were structured so that only the Commissioners who attended particular hearings asked questions of the witnesses. With all due respect to the Commission, its questioning of witnesses at the field hearings lacked the depth and breadth routinely employed during adversarial cross-examination by interested parties. The procedures established for the field hearings afforded no opportunity for Postal Service or Docket No. N2010-1 intervenors to even see the content of written panel witness statements until minutes before the commencement of each hearing. Of necessity, the Postal Service and intervenor representatives at these hearings had to focus on panel witnesses' oral summaries and answers to questions from Commissioners as they were being presented, eliminating any real opportunity to carefully read the witnesses' written statements until after the conclusion of each hearing.

The APA section 556 opportunity for a hearing granted to the Postal Service, intervenors and the Public Representative by 39 U.S.C. § 3661(c) is not merely an invitation for those parties to sit passively in a hearing room and hope that individual Commissioners might ask questions that elicit responses shedding light on the weight and credibility of panel witness or public witness testimony, or of importance to the issues raised by the Postal Service's request, or within the ambit of the interests of the parties participating in the Washington DC hearings. Contrary to explicit mandate in 5 U.S.C. § 556(d), the Postal Service and the parties were denied the opportunity to conduct "such cross-examination of that testimony as may be required for a full and true disclosure of the facts." Nor were the field hearing testimony "subject to cross-examination on the same terms

applicable to that of formal participants” within the meaning of 39 C.F.R. § 3001.20a(c). To preserve the integrity of its advisory opinion and to satisfy the statutory due process requirements mandated by Congress and in its own rules, the Commission is bound to segregate the transcripts of the field hearing testimony from the evidentiary record on which it may rely in developing its Docket No. N2010-1 advisory opinion.⁷

D. Judicial Precedent Makes Clear That Reliance on Field Hearing Testimony Would Violate Section 3661(c).

Because of similar deficiencies in the development of the evidentiary record in earlier dockets, the courts have previously invalidated Commission opinions on several occasions. At the conclusion of the current docket, the Postal Service would prefer to receive an advisory opinion not flawed by reliance on information obtained through procedures that failed to meet the standards required by Congress and affirmed by the courts. Accordingly, the Postal Service encourages the Commission to adhere strictly to the procedural due process requirements of 39 U.S.C. § 3661(b) by basing its Docket No. N2010-1 advisory opinion only on record evidence developed in compliance with 5 U.S.C. §§ 556 and 557.

In this regard, the Postal Service regrets the necessity to remind the

⁷ An identical result is required for those portions of the Docket No. N2010-1 Washington DC hearings on September 16 and October 4, 2010 (Tr. Vol. X, at 2811-27; Tr. Vol. XI, at 3308) during which the Commission conducted proceedings to receive the written and oral statements submitted by United States Senators Lisa Murkowski or to acknowledge or incorporate by reference the written statement submitted by United States Senator Daniel Akaka expressing their views on issues raised by the Postal Service’s request.

Commission that its opinion and recommended decision in Docket No. R80-1 was remanded by the United States Court of Appeals for the Second Circuit because of the Commission's reliance on testimony "on which no discovery or cross-examination was permitted." *Newsweek v. United States Postal Service*, 663 F.2d 1186, 1205 (2d Cir. 1981). In that case, the Commission issued a Notice of Inquiry (NOI) regarding a potential new productivity model adjustment methodology, but offered no witness to explain or defend the methodology, comparable to the witnesses who had been required for all other proposed methodologies. It is noteworthy that the *Newsweek* court found it unpersuasive that the Commission had offered the parties in Docket No. R80-1 an opportunity to comment on the NOI for which no cross-examination had been permitted. The *Newsweek* court remanded Docket No. R80-1 to the Commission with the instruction that the methodology at the heart of the procedural due process controversy be subject "to the same hearing process as all other materials upon which . . . [the Commission] bases its recommended decisions." *Id.* at 1205.

The Docket No. N2010-1 field hearing testimony is full of allegations, characterizations and conclusions that the Postal Service and other parties have not been permitted to test adversarially. Without an opportunity to do so, it is virtually impossible for parties to assess the underlying limitations or flaws in that testimony, determine the degree of disagreement they might have, and the basis on which rebuttal testimony might be based. Thus, contrary to what is implied by Presiding Officer's Ruling No. N2010-1/26, it is not sufficient for purposes of due process that Docket No. N2010-1 parties were informed that they would be

permitted, at the Commission's discretion, to exercise one of the two fundamental procedural rights afforded 5 U.S.C. § 556(d). The Commission may be afforded deference in reasonably defining what constitutes a "reasonable time before implementation" for purposes of 39 U.S.C. § 3661(b). And the Commission may be afforded deference in reasonably determining how parties will be permitted to exercise the opportunity for cross-examination mandated by 5 U.S.C. § 556(d). However, the Commission's discretion does not extend to the point that it can declare, as it did here, that parties will not be afforded that opportunity.

As the Commission will recall, the Court of Appeals for the District of Columbia Circuit remanded its opinion in Docket No. R90-1. In that instance, the remand was warranted because "[t]he parties were afforded no opportunity during that docket to test, or even examine" a methodology ultimately relied upon by the Commission. *Mail Order Association of America v. United States Postal Service*, 2 F.3d 408, 429-30 (D.C. Cir. 1993). In Docket No. R90-1, the Commission developed its own cost attribution methodology for carrier costs, rather than rely upon the methodologies which had been proposed by the parties on the evidentiary record and that had been subjected to full adversarial scrutiny.

In Docket Nos. R80-1 and R90-1, the Commission was under an explicit obligation in former 39 U.S.C. § 3624(a) to conduct rate and classification proceedings in accordance with procedural requirements in 5 U.S.C. §§ 556 and 557, the same requirements that apply to section 3661 service change advisory opinion requests. The Postal Service's concerns about the potential failure of

procedural due process in the instant docket are not insubstantial and are not a mere abstraction. Many of the Commission's responsibilities were changed by the passage of the Postal Accountability and Enhancement Act of 2006. However, its responsibility to conduct proceedings under section 3661 in compliance with the requirements of the Administrative Procedure Act was not. The Commission has signaled its intent to base its Docket No. N2010-1 advisory opinion on field hearing testimony that was developed in a manner that deprived the parties of the procedural due required by section 3661(c). If this were this to occur, Docket No. N2010-1 would conclude in a manner contrary to law.

The Postal Service recognizes that its ability to proceed with plans for the reduction in delivery frequency in fiscal year 2011 depends on whether Congress decides to take action to prevent implementation. To-date, Congress has not so acted. Although it is not obliged by section 3661 to do so, the Postal Service also has deferred planned implementation of the service changes under review in this docket until calendar 2011, in part, to ensure that it had an advisory opinion to review beforehand. The Postal Service has invested considerable resources and attention since early 2009 to the development of an operating concept for the service changes, to the conduct of extensive customer outreach, and to the preparation and explanation of the extensively documented operational, cost and customer impact analysis filed in support of its advisory opinion request. The Postal Service's goal has been to ensure that the Commission has a full understanding of the context and merits of the proposed service changes, and a well-founded basis for offering an informed and useful advisory opinion. Should

the Commission err by relying on any of the field hearing testimony as the basis for that opinion, such a material procedural defect would call into question the validity of the Commission's advisory opinion and could render it a nullity. As a result, postal management would be deprived of the nature and quality of advice that section 3661 was intended by Congress to foster.

The Commission states that it has been advised by Congress that its advisory opinion in this docket will be carefully considered by that body as it reviews the Postal Service's request that no FY 2011 legislative barrier to five-day delivery be imposed. Las Vegas NV Field Hearing Transcript at 5. (May 10, 2010). Accordingly, it would be most unfortunate if Congress also were deprived of the benefit of a legally sound advisory opinion to review as it considers the merits of any legislation affecting whether the Postal Service should be prohibited from implementing any of the service changes under review. The Commission should make every effort to avoid such a result. In the words of the United States Court of Appeals for the District of Columbia Circuit:

Only then can the wheat of meaningful agency action be separated from the chaff of arbitrary and capricious conduct. The Commissioners may not turn away in haughty administrative aloofness from the entire body of law governing their procedures. (Footnote omitted).

Cinderella Career and Finishing Schools v. Federal Trade Commission, 425 F. 2d 583 (D.C. Cir. 1970).

E. The Field Hearing Testimony Is Not Without Value

At the initial Docket No. N2010-1 field hearing in Las Vegas NV, the Chairman of the Commission expressed the conviction that the testimony at that hearing "will help the Postal Service directly as an operator that sincerely hopes

to improve its service when it hears of concerns.” Las Vegas NV Transcript at 10.⁸ The Postal Service has various existing channels through which it receives customer comment generally. Postal management regards customer expressions of preferences, needs and concerns to be important considerations in balancing the conflicting service and efficiency objectives of title 39 United States Code. The direct testimony of witnesses Pulcrano (USPS-T-1), Elmore-Yalch (USPS-T-8), Whiteman (USPS-T-9) and Kearney (USPS-T-11) reflect the extensive customer outreach and market research conducted by the Postal Service and the consideration given to customer concerns in development of the service change plan submitted for review in this docket, not to mention the comprehensive plans the Postal Service has for communicating any service changes that it implements. The Docket No. N2010-1 field hearing transcripts echo some of the concerns, some of the support and some of the opposition expressed to the Postal Service during its customer outreach efforts, during its market research and in its consultations with its employee unions. See USPS USPS-T-1, USPS-T-8 and associated Library References. As one would expect, postal officials at headquarters and in the field have either reviewed or been provided summaries of the Commission’s Docket No. N2010-1 field hearing transcripts for review. However cumulative these transcripts may be in relation to information already considered by the Postal Service during its concept development and market research activities, the Postal Service appreciates the

⁸ It is noteworthy that the Commission drew a contrast between *informal* and *supplemental* field hearing testimony and the *more formal technical presentations* that had been filed as testimony in conjunction with the Request and that would be the subject of examination at the Washington DC hearings.

Commission's efforts in conducting the field hearings and its desire to convey to postal management for consideration the additional postal stakeholder concerns those hearings generated. Still, as a matter of law, reliance on the field hearing transcripts by the Commission as a basis for its advisory opinion could invalidate that opinion.

After receipt of the Commission's advisory opinion, postal management is not prohibited from independently reviewing the field hearing transcripts again, or the Commission's public commenter files compiled under 39 C.F.R. § 3001.20b, for that matter. Before taking action in response to the Commission's advisory opinion, it may be worthwhile for postal management to compare (a) the intelligence gathered through its extensive customer outreach and qualitative and quantitative market research to (b) the informal customer statements and expressions of customer concern compiled by the Commission in its public comment files and field hearing transcripts.⁹ Such an exercise could shed light on whether sufficient basis exists to deviate from plans to implement the service changes about which the Commission will have opined.

F. Withdrawal of the Medco Testimony Limits the Evidentiary Basis for Conclusions Regarding Mail Order Pharmaceutical Shipments

To ensure the integrity of the Docket No. N2010-1 advisory opinion, the Postal Service also is compelled to remind the Commission that the withdrawal of the testimony of witness Thomas Moriarty (Medco-T-1) by Medco Health

⁹ Irrespective of whether the latter materials received by the Commission were in response to its invitation or in response to appeals by postal employee unions who oppose the service changes. See Tr. Vol. X at 2853-54.

Solutions has material consequences relevant to the evidentiary basis for any factual conclusions regarding potentially adverse impact on recipients of mail order pharmaceutical shipments.

On August 3, 2010, Medco Health Solutions (Medco) moved to intervene in Docket No. N2010-1 and concurrently filed the testimony of Thomas Moriarty (MEDCO-T-1). That testimony can fairly be characterized as containing numerous allegations regarding the potential adverse impact of the service changes on recipients of pharmaceutical products delivered by mail. In the Postal Service's view, the Moriarty testimony suffered from a glaring absence of factual information and did not provide a foundation to support numerous conclusions about such potentially adverse impact. Not permitted to do so in connection with the field hearing witness statements, the Postal Service reviewed the Moriarty testimony and propounded interrogatories on August 4 and 6, 2010. The questions sought to explore whether reliable, probative and substantial evidence -- within the meaning of 5 U.S.C. § 556(d) -- existed to support Medco's claims that the elimination of Saturday delivery to street addresses would materially impact recipients of mail order pharmaceutical shipments.¹⁰

It bears emphasizing that the Commission's rules explicitly warn parties that a failure to provide relevant and material information in support of claims of adverse impact will be taken into account in determining the weight to be placed on their evidence and arguments. See 39 C.F.R. § 3001.20a(c). This rule is in accord with the requirement that a section 3661 advisory opinion be supported

¹⁰ See <http://www.prc.gov/Docs/69/69523/Medco%20interrogs.1-15.pdf> and <http://www.prc.gov/Docs/69/69570/Medco%20interrogs.16-22.pdf>

by and in accordance with . . . reliable, probative, and substantial evidence. See 5 U.S.C. § 556(d).

In the administrative hearing, “the substantiality of the evidence must take into account whatever in the record fairly detracts from its weight. *Universal Camera Corp. v. National Labor Relations Board*, 340 U.S. 474, 487-88 (1951). “Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Consolidated Edison Co. v. National Labor Relations Board*, 305 U.S. 197, 229 (1938). The record must be reviewed as a whole. Contrary evidence may not simply be ignored on review.

On August 13, 2010, rather than answer a single subpart of a single interrogatory, Medco filed a pleading that (1) characterized witness Moriarty’s testimony as “describing the negative effects of five-day street delivery on its customers” and then (2) moved to have the testimony withdrawn.¹¹ In its motion, Medco asserted that a “large proportion” of the Postal Service interrogatories were “objectionable, . . . not relevant, overly broad, or unduly burdensome” Next, Medco characterized the testimony of witness Moriarty as “duplicative of what Mr. Underkoffler has already presented to the Commission in the Sacramento CA field hearing (May 12, 2010). Medco then lamented that it could not “justify the legal expense and in-house effort of responding to these

¹¹ Docket No. N2010-1, Motion of Medco Health Solutions to Withdraw Testimony of Thomas Moriarty (T-1) (August 13, 2010). Medco filed no pleading clearly and fully stating the basis for any objection, or quantifying any burden that responding to any particular interrogatory would impose, or seeking to be relieved of responsibility for responding to any particular interrogatory. See 39 C.F.R. § 3001.27(c).

requests.”¹²

Such flimsy claims fall short of the standards of Commission Rule 3001.27(c) to justify a discovery objection. But there are two things related to those claims that are more troubling. The first is the absence of any basis for the Commission to declare itself “sympathetic to Medco’s assertion that much of the Postal Service’s discovery seems overly burdensome and of only attenuated relevance.” Presiding Officer’s Ruling No. N2010-1/26 at 2 (August 23, 2010). The ruling further characterizes the Postal Service’s exercise of its right to conduct discovery as inappropriately “[i]mposing needless litigation costs on interested mailers” and as “discourag[ing] . . . the development of a balanced record.” *Id.* If not utterly Orwellian, it seems at least contrary to fundamental notions of due process for it to be asserted that the evidentiary record would be “unbalanced” if parties were expected to make an effort to substantiate the allegations presented in their testimony.

Unsubstantiated claims of adverse impact on recipients of mail order pharmaceutical shipments have been a rite of passage, a common touchstone of litigation strategy for each party that has filed evidentiary testimony opposing the service changes in this docket. Barred from cross-examining witnesses raising such claims at each of the seven field hearings, the Postal Service scrutinized Medco witness Moriarty’s August 3, 2010 evidentiary hearing testimony (MEDCO-T-1) and filed interrogatories on August 4 and 6, 2010 to provide as

¹² Such a claim about expense seems dubious when made at the same time that Medco apparently had approximately \$750 million in cash available for the purchase of United BioSource Corp. See <http://www.healthcare-digital.com/news/mergers-and-acquisitions/njs-medco-acquires-united-biosource-750-million> .

much time as possible for the production of responses and to sort out fact from apocryphal scare story. The questions sought explanations of the basic features of arrangements through which pharmaceutical mail orders are received, fulfilled and dispatched by Medco, its general shipping practices and patterns, and various allegations in the Moriarty testimony of adverse impact that would result from the elimination of Saturday delivery to street addresses:

USPS/MEDCO-T1-2, 10, 20: Provide documents revealing the quantitative or qualitative basis for allegations regarding "severe negative consequences" or "negative impact" or "severe negative implications" that would result from the proposed service changes.

USPS/MEDCO-T1-6: What mail classes does Medco rely on for delivery?

USPS/MEDCO-T1-8: By each delivery day of the week, what percent of each week's Medco mail order shipments are expected to be delivered -- Monday, Tuesday, Saturday, etc.?

USPS/MEDCO-T1-11, 12, 13, 14, 15: What procedures does Medco routinely employ to alert customers to order prescription refills in advance of depletion?

USPS/MEDCO-T1-17: What percent of shipments are scheduled for Saturday delivery?

USPS/MEDCO-T1-18: What percent of shipments with a Saturday delivery expectation today would have the delivery expectation shifted to the following Monday if Saturday delivery were eliminated?

USPS/MEDCO-T1-9, 19: What percent of shipments go to Post Office Box? An urban address? A suburban address? A rural address?

Such questions go to the very heart of claims in Medco-T-1 and other intervenor testimony that the elimination of Saturday mail delivery to street addresses will have significant negative adverse consequences for recipients of mail order pharmaceutical shipments, that significant proportions of Saturday deliveries are to recipients down to their proverbial "last pill," and that rural and senior

recipients will be affected disproportionately.

The Commission has emphasized that:

A primary goal of this proceeding is to develop a full and accurate record of the public's views about the proposed change in the nature of postal services, so that the Commission can provide the Postal Service with the best possible advice.

Presiding Officer's Ruling No. N2010-1/26 at 2. Thus, the Commission must agree that, if hearings conducted under 39 U.S.C. § 3661 are to conform to requirements of the Administrative Procedure Act, those hearings cannot merely consist of a "full and accurate" transcription of the public's views, but also must reflect that interested parties were permitted to examine the basis for claims made in support of those views. The Commission is not wrong to be sympathetic to the burdens that due process imposes on participants in its dockets. However, the Commission is obliged to be more than merely sympathetic to the will of Congress that it carry out the responsibility of ensuring that due process is observed.

A second troubling aspect of Ruling No. N2010-1/26 is the Commission's declaration that Medco "properly recognizes the Commission's determination to treat testimony received at field hearings as part of the evidentiary record in this docket." *Id.* The Ruling continues:

Parties have been consistently reminded that testimony received during field hearings may be rebutted, clarified or commented on during the rebuttal phase of the case. See, e.g., Tr. 1/39; see also transcript of Chicago Field Hearing, June 21, 2010 at 27." *Id.* at 2, n.3.

For all the reasons explained above in section III.D of this brief, it would be wholly inconsistent with the requirements of due process for the Commission to

proceed as if it had the authority to erase the requirement in 5 U.S.C. § 556(d) that parties be given the opportunity to cross-examine *and* rebut field hearing testimony before it can be relied upon as evidence. Subsection 556(d) is written in the conjunctive, not the disjunctive. It does not permit the Commission to offer the parties two alternatives: cross-examination *or* rebuttal. It requires the Commission to offer the parties the opportunity to exercise two related but distinct tools of due process: cross-examination *and* rebuttal. Unfortunately, the Commission failed to do so with regard to the field hearing testimony. Putting parties on notice of an intent to violate the 39 U.S.C. § 3661 mandate to conduct proceedings in accordance with the explicit requirements of 5 U.S.C. § 556(d) does not cure that defect. It only serves to highlight a lack of appreciation for or an unwillingness to honor a basic due process requirement.

In summary, rather than answer a single subpart of a single interrogatory, Medco simply declared the entire lot oppressively burdensome and withdrew its testimony. That withdrawal results in a virtual absence of evidence relevant to the issue of the alleged adverse impact of the elimination of Saturday street delivery on recipients of mail order pharmaceutical shipments. Medco is mistaken in believing that the Commission can lawfully rely on any of the field hearing testimony as a basis for its advisory opinion -- even if Medco did not come to that mistaken conclusion of law on its own.

G. A Substantial Basis Exists To Raise Concern That The Request Has Been Pre-Judged

Even if the Commission avoids committing the aforementioned procedural due process error and conscientiously relies only on evidence that meets the legal standards required by 5 U.S.C. § 556(d) and 39 C.F.R. § 3001.20a(c), the Postal Service remains concerned that the Commission's advisory opinion may not escape the taint of prejudice. At the foundation of the section 3661 review process established by Congress is the expectation that the Commission's advisory opinion will reflect a judgment based upon the application of relevant statutory policy factors to record evidence developed in accordance with 5 U.S.C. §§ 556 and 557. It is critical, therefore, that the Commission's advisory opinion stand as the product of a properly-administered review process approached with five open minds, and that there be no basis for concern that its opinion mirrors judgments conceived before the consideration of the evidentiary record or despite the weight of the record evidence. It is with great reluctance that the Postal Service raises the following additional concern.

Those who appreciate why Congress would insist on specific procedural due process standards for section 3661 proceedings should be concerned that the Chairman of the Postal Regulatory Commission would apparently express opinions on the merits of the cost and volume impact analysis data supporting the Docket No. N2010-1 request *three hours and fourteen minutes before* the first Docket No. N2010-1 pleading was filed at the Commission on March 30, 2010 at 3:24 p.m. As reported online at 12:10 p.m. that day by *DailyFinance.com*, the Chairman is quoted as stating:

This proposal has a lot of doubters . . . [.] I'm skeptical . . . [.] . . . I don't believe the [Postal Service is] . . . going to save as much money as they think they are. It will lower total volumes in the mail more than they think [and] make the mail less viable. . . . It's not a good idea at this time of high unemployment to eliminate tens of thousands of jobs without carefully looking at alternatives. I'm going to look at this proposal and all the evidence very carefully before I make my decision.

<http://www.dailyfinance.com/story/company-news/no-mail-on-saturdays-the-postal-service-will-have-to-fight-for/19419765/>.

The apparent prejudgment that postal management is not “going to save as much money as they think they are” and that postal management’s proposal “will lower total volumes in the mail more than they think” goes to the very heart of the justification for the request in this docket. Such an apparent expression of prejudgment seems to establish that very firmly entrenched factual conclusions were reached before the request was even filed.¹³ Any subsequent assertion that the factual evidence would be examined carefully seems to ring hollow when it follows such apparently firm conclusions about the underlying financial and volume impact data that – at the time -- had yet to be filed for review, and (b) it follows an unqualified declaration by the Chairman that the service change proposal, as a matter of policy, is “not a good idea” When it is a trier of fact in service change proceedings subject to the Administrative Procedure Act, the Postal Regulatory Commission is bound to conduct itself in a manner at all times that avoids the result that:

a disinterested observer may conclude that [the agency] has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it.

¹³ Such commentary is distinguishable from permissible expression of policy or legal theory. See, *Association of National Advertisers, Inc. v. Federal Trade Commission*, 627 F.2d 1151, 1171-72 (D.C. Cir. 1979), *cert. denied*, 447 U.S. 921 (1980).

Gilligan, Will & Co. v. SEC, 267 F.2d 461, 469 (2d. Cir.), *cert. denied*, 361 U.S. 896 (1959). Unfortunately, the Chairman's March 30, 2010 statement appears to fall short of that standard.

Those who depend on the due process requirements of section 3661 are further discouraged by a July 5, 2010, report in the *New York Times*. When asked to comment on issues raised by the Docket No. N2010-1 request, the Chairman apparently expressed the conclusion that:

The real communication networks have to be 24/7 . . . [.] The Postal Service in fact should be expanding its accessibility and delivery capability to meet those needs. The long-term future of the Postal Service may be limited by their interest in reducing service today.

See <http://www.nytimes.com/2010/07/06/business/06postal.html?pagewanted=all>.

Such an utterance either establishes the existence of pre-judgment of the facts underlying the proposal to reduce street delivery from six days to five days a week or, at a minimum, reinforces the appearance of prejudgment.

The United States Court of Appeals for the District of Columbia Circuit has emphasized to regulatory agencies that administrative hearings "must be attended, not only with every element of fairness but with the appearance of complete fairness" *Amos Treat & Co. v. Securities and Exchange Commission*, 306 F.2d 260, 267 (D.C. Cir. 1962). That circuit court also has noted that prejudgment:

may have the effect of entrenching a Commissioner in a position which he has publicly stated, making it difficult, if not impossible for him to reach a different conclusion in the event he deems it necessary to do so after consideration of the record.

Cinderella, 425 F.2d at 590. It also has been observed that:

Litigants are entitled to an impartial tribunal whether it consists of one . . . [person] or twenty . . . [T]here is no way which we can know of whereby the influence of one upon the others can be quantitatively measured.

Berkshire Employees Association of Berkshire Knitting Mills v. National Labor Relations Board, 121 F.2d 235, 239 (3d Cir. 1941).

Accordingly, the Postal Service finds itself where no party required to place its trust in a particular advisor ever wants to be: seriously concerned about the fundamental quality of the advice that it will receive. Until it receives the Commission's advisory opinion in this docket, the Postal Service cannot judge whether that opinion will be tainted by a reliance on materials that are not properly a part of the record evidence or by a predisposition to factual conclusions not supported by reliable, probative and substantial evidence. Unfortunately, until then, it has grounds for being anxious. Accordingly, the Postal Service takes advantage of this opportunity to strongly encourage the Commission to exercise every measure necessary to ensure that its advisory opinion meets the statutory due process requirements enacted by Congress and reflected in its own rules, as well as the standards expressed by the courts.

IV. The Docket No. N2010-1 Request Is Supported By Reliable, Probative and Substantial Evidence and Complies With Applicable Policies.

A. The Postal Service Must Take Into Account Many Statutory Policy Objectives.

In binding the nation together through the correspondence of the people, the United States Postal Service is obliged to provide prompt, reliable and efficient service to all communities. 39 U.S.C. § 101(a). Its responsibilities includes the planning, development, promotion and provision of adequate and efficient postal services that, as nearly as practicable, serve the entire population of the United States. 39 U.S.C. §§ 101(b), 403(a) and 3661(a). In fulfilling its mandate, the Postal Service is directed to provide effective and regular service and is authorized to establish and maintain postal facilities of such character and in such locations as are necessary to provide customers ready access to essential services. 39 U.S.C. §§ 101(b) and 403(b)(3). At the same time, subsections 101(a), 403(a), 403(b)(1), 403(b)(3) and 3661(a) direct the Postal Service to be efficient and to maintain reasonable economies in its operations. The Postal Service is directed to give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of important letter mail. 39 U.S.C. § 101(d). Pursuit of these various policies often requires that a balance be struck between competing objectives. The directive in subsection 101(a) that the Postal Service provide prompt service must be balanced, for instance, with the instruction in subsection 101(f) that postal management be economical in selecting modes of transportation. However, at

all times, the Postal Service is required to avoid undue or unreasonable discrimination among users and not grant undue or unreasonable preferences to any users. 39 U.S.C. § 403(c).

B. The Commission's Role Under Section 3661 Is Limited

Notwithstanding the legislative changes resulting from enactment of the Postal Accountability and Enhancement Act at the end of 2006, management of the national postal system and pursuit of its operational goals remain in the hands of the Board of Governors of the Postal Service. The longstanding limits on the Commission's authority in 39 U.S.C. § 3661 remain unchanged. That provision authorizes the Commission to provide non-binding advice in response to Postal Service requests concerning plans for changes in the nature of postal services that are at least substantially nationwide in scope. As it relates to such service changes, the United States Court of Appeals for the District of Columbia Circuit has affirmed that the Commission's review is "relatively passive" and "unadorned by the overlay of broad FCC-esque responsibility for industry guidance and of wide discretion in choosing the appropriate manner and means of pursuing its statutory mandate." *Governors of the United States Postal Service v. United States Postal Rate Commission*, 654 F. 2d 108, 117 (D.C. Cir. 1981).

Under section 3661, the role of the Commission is not to advise what it would do if it were authorized to step into the shoes of the Board of Governors or the Postmaster General and exercise the authority reserved to them. Section 3661 anticipates that changes in postal services that are pursued by postal

management for rational reasons consistent with the policies of the Act may be ones that other reasonable minds (not authorized to manage the Postal Service) might not elect to initiate. Section 3661 is not an invitation for the Commission to second-guess the judgment of postal management in selecting the particular service changes for which an advisory opinion is requested. The Commission's role under section 3661 is to develop an evidentiary record as prescribed by Congress, review the evidentiary record before it and opine whether the Board's and postal management's planned service changes are permitted by the broad service and efficiency objectives of title 39.

Likewise, it is not the Commission's task to respond to a specified service change proposal under section 3661 by searching for alternative service changes, product development initiatives, cost containment strategies, revenue enhancement opportunities or legislative prescriptions to recommend in lieu of the service change about which the Postal Service seeks advice. Section 3661 does not require that the changes reviewed under section 3661 be pursued only if they enhance or embellish an existing service. Nor does it require that a reduction in a service feature be pursued only after every other alternative legislative prescription, revenue enhancement, cost containment, product development or alternative service change option has been exhausted or proven infeasible.

C. The Postal Service Has Latitude to Determine Delivery Frequency

Some general features of the national postal system, such as regular mail delivery to virtually every street address Monday through Saturday, trace their

origins to the 19th century. Notwithstanding the long history of providing six-day delivery, Congress did not mandate any specific number of days per week that mail delivery generally be provided when it reorganized the Post Office Department into the United States Postal Service in 1970. Likewise, no similar specification will be found among the changes to title 39, United States Code, wrought by the Postal Accountability and Enhancement Act of 2006.

Nevertheless, over the past quarter-century, Congress has acted on an annual basis to restrain the Postal Service from pursuing any change in the general frequency of regular mail delivery from six to five days a per week. The most recent such legislative prohibition was enacted for fiscal year 2010 which concluded on September 30, 2010.

In years past, in different circumstances, the Postal Service has explored the concept of five-day delivery, but to a degree much less rigorously than is reflected in the materials supporting the Request in this docket. The general concept also has been the subject of examination by both the President's Commission on the United States Postal Service and the Postal Regulatory Commission.¹⁴ However, until undertaking in early 2009 to develop the operational concept and related materials filed in support of the Request in this docket, postal management has never come to the conclusion that it was necessary to so thoroughly analyze the operational, cost, and volume impact consequences, to develop appropriate implementation and communications plans, and obtain authority from the Board of Governors to submit a request to the Commission under section 3661 for an advisory opinion on five-day delivery.

¹⁴ See Docket No. N2010-1, USPS Request at 6-8.

D. The Planned Service Changes Are Carefully Conceived

1. The planned changes are the product of extensive customer consultations and research.

The changes submitted by the Postal Service to the Commission for review in this docket relate to the nature of service regularly provided on Saturdays. Generally speaking:

- Delivery of mail to street addresses on Saturdays will be discontinued (except, as noted above, for Express Mail). Saturday delivery of mail to Post Office boxes (including no-fee Group E boxes) will continue.
- Scheduled collection of mail from standard blue collection boxes will be discontinued on Saturdays. Likewise, Saturday pick-up of Express Mail, Priority Mail and Parcel Post will be discontinued. However, collections from dedicated Express Mail collection boxes will continue on Saturdays.
- With the exception of Express Mail and qualifying destination entry bulk mail, the initial outgoing processing of mail accepted on Saturdays will generally not occur until outgoing mail processing operations resume on the following (non-holiday) Monday.

In reflecting upon the planned changes, it is important to bear in mind what will not change. Post Offices and other retail locations, as well as business mail entry units, will continue to operate on Saturdays, providing service, selling products and accepting mail. Express Mail acceptance, processing, transportation and delivery service will continue to be provided seven days a week. A full description of the changes is contained in the Direct Testimony of Samuel Pulcrano on Behalf of the United States Postal Service (USPS-T-1). Some highlights are summarized and discussed below.

Witness Pulcrano's testimony emphasizes that retail operations at Post Offices, stations, and branches will not be curtailed for any reason related to the elimination of a day of regular street address delivery. Retail customers will still

be able to purchase stamps, money orders, and shipping supplies, tender single-piece mail for acceptance at retail windows,¹⁵ obtain mail from Post Office boxes, purchase other products and services, drop mail in secure retail lobby chutes on Saturday.¹⁶ USPS-T-1 at 15. Postal products and services also will still be available through various existing alternative retail access channels and via www.usps.com.

The Postal Service will continue the practice of managing the spike in package and parcel deliveries that usually occurs in December by resuming Saturday deliveries of packages/parcels to street addresses on an as-needed basis. As is the case today, this may occur two or three Saturdays before Christmas in a five-day environment, depending on which day of the week Christmas falls, in order to level workloads and ensure a greater likelihood of delivery of gifts before Christmas. Continuation of this policy will primarily benefit senders and recipients of Priority Mail, Parcel Post, Parcel Select and obvious gift packages in First-Class Mail. USPS-T-1 at 13.

The USPS Library Reference associated with witness Pulcrano's testimony (USPS-LR-N2010-1/1) describes the development of the service change concepts by a cross-functional team of management experts responsible for mail acceptance, processing, delivery, transportation, labor relations, and

¹⁵ The current policy of providing circular hand-stamped postmarks on single-piece mail upon request at Post Offices and other postal retail units will continue on Saturday. USPS-T-1 at 15, n.8.

¹⁶ However, with the exception of Express Mail, any mail tendered to a window clerk and postmarked, or dropped in a lobby chute at a postal retail location on Saturday will not be processed until the following Monday (or Tuesday, if Monday is a holiday).

customer service at Postal Service headquarters, as well their consultations with managers in the field. Witness Pulcrano describes the extensive consultations with mailers. Those consultations and the rigorous quantitative and qualitative market research performed by Postal Service witness Elmore-Yalch¹⁷ confirm that there is widespread acceptance for change in regular delivery frequency as a means of addressing the Postal Service's financial instability. The information gathered through these processes also establishes that there is widespread ability on the part of mail senders and recipients to adjust to the elimination of delivery service to street addresses on Saturdays. Mr. Pulcrano's testimony also reveals that the outreach and market research even resulted in modifications to the operating concept originally under consideration. Tr. Vol. II at 88, USPS Library Reference N2010-1/1 at 11.

As witness Pulcrano explains, Saturday was selected as the day to eliminate some operations and services for several reasons. This determination is consistent with the overwhelming preference expressed by customers willing to accept the elimination of a day of residential delivery. In the current Monday-through-Saturday delivery environment, Saturday has the lowest average daily volume delivered. More than one-third of American business addresses are closed on that day. Alignment of the postal delivery schedule to the core (Monday-through-Friday) business operating schedule helps to preserve the mail stream as a useful channel of communication between consumers and businesses. With Sunday already a general non-delivery day, the selection of

¹⁷ Direct Testimony of Rebecca Elmore-Yalch on Behalf of the United States Postal Service (USPS-T-8).

any day other than Saturday as the second such day would be counter to that objective and, in most cases, would create two start-and-stop mail processing and delivery cycles per week, which would not be operationally efficient for the Postal Service or many of its customers. Tr. Vol. II at 88, 100-02, 104. Witness Pulcrano's testimony also shows that the Postal Service carefully analyzed customer preferences and needs as expressed during customer consultations and market research before determining that elimination of Saturday collections should be pursued. Tr. Vol. II at 89, 96-97. The qualitative market research did not generate indications of potential disparate impacts on rural customers. Tr. II Vol. at 111. During industry outreach consultations, shippers of mail order pharmaceutical products indicated a preference for the *status quo* but indicated that they could adjust their operations if Saturday delivery to street addresses were to be eliminated. Tr. Vol. V 1194-95. Care was taken to consult with local elections officials to determine the potential impact of the proposed changes on electoral processes. It was determined that increased communications alerting voters to mail in a timely fashion and changes in mode of delivery could help to minimize the percentage of late ballots in jurisdictions that utilize Vote By Mail. USPS Library Reference N2010-1/1 at 10-11; Tr. Vol. II at 130.

The continuation of Saturday delivery to Post Offices boxes and via Caller Service serves the interests of consumers and remittance processors, both of whom value the mailstream as a medium for the timely transfer of financial instruments. As witness Pulcrano emphasizes, when regular Saturday delivery to street addresses is eliminated, there will be no practical or fair way to make

exceptions and provide Saturday delivery for customers solely in response to assertions or representations by the sender or recipient regarding the intrinsic value, importance, or time-sensitivity of particular mail pieces. Accordingly, aside from the use of Express Mail, the Postal Service has determined that the most rational basis for determining whether to continue Saturday delivery for customers will be on the bases of whether: (a) in lieu of available street address delivery, (b) they arrange and pay for a delivery alternative (such as Post Office Box and Caller Service), or (c) they have a no-fee Group E Post Office Box because they reside at street addresses in isolated areas where street delivery of mail is not otherwise provided. USPS-T-1 at 10-11.

Even if, in the main, customers have expressed that they generally would be able to adjust, the Postal Service is sensitive to and recognizes that the elimination of Saturday street delivery will be incompatible with the operational preferences of some customers, such as newspapers that use the mails and publish Saturday editions, and will require some of them to consider changing their operating plans or seeking alternative modes of delivery. This came through during the consultative process managed by witness Pulcrano. USPS LR-N2010-1/1 at 11; Tr. Vol. II at 109. Similarly, shippers of live animals and perishables will be informed of the need to enter such mailings for arrival at the appropriate destination delivery units (DDU) Monday through Friday, rather than the current Monday through Saturday window. Express Mail will remain an option for shippers of live animals and perishables who cannot adjust and require Saturday street delivery. If these items arrive at a destination delivery unit after

the critical dispatch time on Friday, the Postal Service will continue its practice of contacting recipients to arrange for pick-up on Friday or Saturday on a site-by-site basis. USPS-T-1 at 11-12. Recipients of prescription medications who wish to preserve the option of Saturday delivery also have the option of having such items mailed to Post Office boxes; many who want delivery to a street address in exigent circumstances can utilize Express Mail. *Id.* From the outset, the Postal Service has been transparent and has sought to be fair, even if it means that it is not possible to accommodate all stakeholder concerns that are generated by the planned changes.

The Postal Service has comprehensively analyzed the operational changes that would be implemented in support of the service changes under review. A thorough analysis of the changes in retail and delivery operations is presented in the Direct Testimony of Dean Granholm on Behalf of the United States Postal Service. See USPS-T-3; Tr. Vol. II at 283 *et seq.* Anticipated mail processing operational changes are explained in the Direct Testimony of Frank Neri on Behalf of the United States Postal Service. See USPS-T-4; Tr. Vol. VI at 1519 *et seq.* Changes in transportation that will be implemented are described in the Direct Testimony of Luke Grossmann on Behalf of the United States Postal Service. See (USPS-T-5); Tr. Vol. VI at 1387 *et seq.* Their expert presentations are unrefuted and warrant deference by the Commission.

2. The Postal Service has been transparent about the elimination of regular Saturday collections and processing of outgoing mail accepted that day.

When five-day delivery is implemented, regular blue collection boxes will

have the same status on Saturday that they currently have on Sunday: they will not be subject to collection, except in cases where overflow collection may be conducted on weekends as needed. In the five-day environment, mail deposited in a regular blue collection box or in a retail Post Office on or after the last collection on Friday will be processed on Monday (or Tuesday, if Monday is a holiday). When these changes occur, mailers expecting same day processing of collection mail will need to observe posted last pick-up times for (non-holiday) Mondays through Fridays and deposit mail on those days. Customers who deposit mail in these collection boxes after the last pick-up time on Friday should expect the mail to remain there until it is collected for the initiation of processing on the following Monday (or Tuesday, if Monday is a holiday). USPS-T-1 at 14. In contrast, Saturday collections from dedicated Express Mail collection boxes will continue so that this mail is processed, transported and delivered seven days a week.

Bulk mail entry on Saturday (and Sunday) will continue at Network Distribution Centers, Processing & Distribution Centers, other mail processing plants, detached mail units, Post Offices and other select destination delivery units. Generally, the initiation of processing for outgoing bulk mail accepted on Saturday will be the following Monday. However, there will be an optional Saturday initiation of processing for local outgoing and incoming Sectional Center Facility mail entered on Saturday when three requirements are met: (1) the mail is deposited at a BMEU co-located at a plant; (2) the mail is physically separated and properly presorted to the Sectional Center Facility or a finer scheme

according to labeling lists; and (3) mail is entered prior to the critical acceptance time on Saturday. USPS-T-1 at 15-16.

3. Service standard business rules remain unchanged but “start-the-clock” measurement rules will need to be adjusted.

The service changes at issue in this docket do not alter or affect currently applicable service standards day ranges or the business rules that determine the expected days-to-deliver for 3-digit ZIP Code origin-destination pairs. Thus, no changes to the service standard regulations, 39 C.F.R. §§ 121 and 122, have been proposed or would need to be made if the service changes under review were implemented. However, for regular mail¹⁸ intended for delivery to a street address in the five-day environment, Saturday becomes a non-delivery day for purposes of determining the expected delivery day and the eventual “stop-the-clock” event associated with service performance measurement. For some mail, other associated operational changes affect the day on which occurs the initial mail processing activity that constitutes the “start-the-clock” event for purposes of service measurement. Accordingly, the Direct Testimony of Thomas Day on Behalf of the United States Postal Service (USPS-T-10) clarifies the basis for any changes in performance measurement that ultimately may need to be implemented when the service changes take effect

4. The Postal Service has developed necessary plans for communicating changes and maximizing the public’s ability to adjust.

Witness Pulcrano has emphasized that none of the service changes under review in this docket will be implemented until after the mailing public has been

¹⁸ In this context, “regular” refers to all market-dominant and competitive mail products except Express Mail.

given six months notice of the implementation date selected by the Postal Service. Tr. Vol. II at 279. Thus, assuming the issuance of an advisory opinion and then the announcement of an implementation date by the Postal Service on December 31, 2010, implementation would not occur before July 2011 at the earliest. The service changes described in this request potentially affect every sender and recipient of mail served directly by the United States Postal Service. Accordingly, the Direct Testimony of Stephen Kearney on Behalf of the United States Postal Service (USPS-T-11; Tr. Vol. II at 515 *et seq.*) summarizes the tools and techniques that the Postal Service will employ to effectively communicate vital information to customers in a timely fashion. His testimony makes clear that the Postal Service has a comprehensive, multi-media plan for informing the public and maximizing the ability of mailers and recipients to adjust mailing practices and delivery expectations before and after the service changes are implemented.

E. Extensive Cost Analysis Provides Reliable Estimates of the Potential Operating Costs

The well-grounded conceptual approach employed by the Postal Service to estimate the cost savings associated with the contemplated shift to five-day delivery (and related changes) is presented in detail in the testimony of Professor Michael Bradley, USPS-T-6. As Professor Bradley testifies, the preferred approach to estimating the cost savings has as its foundation a detailed operational analysis of the service changes. USPS-T-6 at 1. Once the set of operational changes is established, the cost implications can then be calculated.

Prof. Bradley further explains:

Cessation of Saturday delivery eliminates the need from a number of transportation, mail processing, and delivery activities that previously took place on Saturday. However, the volume of mail to be delivered is not directly changed. Thus, some of the activities that formerly took place on Saturday will now have to be accomplished over five delivery days. An operational analysis must consider not only the changes that will take place on Saturday but also the changes that will take place on the other days of the week.

Id.

As Prof. Bradley also discusses, the need for an operations-based approach, rather than reliance on the traditional “volume-variability” alternative, was previously recognized by the Commission itself in its Universal Service Obligation (USO) work. As quoted by Prof. Bradley on page 4 of his testimony, when reviewing previous work examined as part of its USO study, the Commission observed:

What has not been explicitly recognized by either GMU or IBM is that models used to find the volume variability of individual products for pricing purposes solve a different problem than the one posed by changing the frequency of delivery throughout the network. The first modeling approach is designed to measure the effect on costs of adding the next piece of volume. This is measured to provide the basis for an economically efficient price signal that can guide the buying decision of the mailer. Changing the frequency of delivery throughout the network involves not just huge increments of volume, but also a basic reconfiguring of the delivery function to deal with huge increment of volume.

This calls for a very different model—one that concerns itself with major changes in total workload and how the processing and delivery functions would be reorganized to meet them. Delivery activities that are fixed over infinitely small changes in volume may not remain fixed in the new environment. Delivery activities that vary linearly over very small ranges of volume may become curvilinear in the new environment, and may increase or decrease at the margin.

Report on Universal Postal Service and the Postal Monopoly, Postal Regulatory Commission, December 19, 2008 at 128-129. Prof. Bradley further elaborated on the connection between the approach he advocates and the Commission's USO Report comments in his responses to ChIR No. 3, Question 2 (May 14, 2010), and ChIR No. 6, Question 9 (July 9, 2010). Tr. 4/839-42, 897-901.

Prof. Bradley therefore identifies the three steps which rational cost savings estimation in this exercise should follow. USPS-T-6 at 6-8. First, establish the appropriate baseline for the six-day delivery environment. Prof. Bradley concludes that, for this step, the appropriate baseline is comprised of those parts of the ACR/CRA model that cover the operations affected by a change to five-day delivery. *Id.* at 6. Second, review the operational response to five-day delivery to identify possible cost implications of the operational changes.

As Prof. Bradley explains:

In general, four types of operational responses should be considered. The first type is analysis of which operations would be eliminated or curtailed on Saturday as a result of eliminating regular delivery service on that day. The second type is analysis of the structure of operations required for those services, like Express Mail Delivery, that continue to be provided. The third type is analysis of the operations on the other days of the week that could be influenced by the migration of mail from Saturday to those days. The fourth type is a change in the consumption of indirect resources such as supervisors, vehicles, or buildings caused by the change in operations. Each of the previous three types of operational changes could affect not only direct labor costs but also indirect costs and such changes should be included in the overall cost savings.

Id. at 7. The third step then is to calculate the cost impacts of the operational changes and sum them. These calculations involve both direct and indirect

costs, and savings can be identified by directly measuring the change in costs, or by calculating the five-day cost and then subtracting that from the corresponding six-day baseline cost. The overall cost saving is just the sum of the cost savings in the various cost components. *Id.* at 8.

Although, as outlined by Prof. Bradley, the appropriate estimation of cost savings is thus analytically straightforward, in practice it was a monumental undertaking. Teams of operational experts in city and rural carrier operations, mail processing operations, Post Office operations, and transportation operations were assembled and worked diligently over many months to grapple with the questions of how operations in their respective functions would change on Saturdays, and how they would likely change on the other days of the week. Ultimately, the conclusions reached by these teams were summarized and sponsored in the testimonies of three operations witnesses. Witness Granholm testified regarding changes in city and rural carrier operations, and Post Office operations. USPS-T-3. Witness Neri testified regarding mail processing operations. USPS-T-4. Witness Grossmann testified regarding transportation operations. USPS-T-5. Collectively, their testimonies addressed the second of the three steps identified by Prof. Bradley, identification and quantification of operational changes, expressed usually (but not exclusively) in terms of workhours saved.

The third and final step of the process, translation of operational inputs into dollar cost savings, was likewise the product of lengthy and careful deliberations by teams of costing experts working in close coordination with the

corresponding operational teams. Once again, the results of these efforts were presented in multiple testimonies. Prof. Bradley addressed city and rural carrier savings, as well as transportation. USPS-T-6. Dr. Jeff Colvin, meanwhile, addressed a variety of topics, including service-wide benefits and other indirect cost savings, maintenance and fuel savings for carrier vehicles, mail processing savings, and Post Office operations savings. USPS-T-7. Dr. Colvin also aggregated the cost savings estimates presented in his testimony and that of Prof. Bradley, in order to generate a summary cost savings presentation. *Id.* Dr. Colvin further explained the exact nature of the aggregated cost savings estimates he was presenting:

The estimates in this testimony are of “full-up” cost savings from five-day delivery expressed in terms of FY 2009. The term “full-up savings” refers to the annual savings less associated volume reductions available after the completion of all adjustments needed to reduce staffing and adapt contracts, plants, and equipment to the changed operational environment. Put differently, the estimates in this testimony are expressed as the annual savings that would have occurred in FY 2009 if five-day delivery had been fully implemented for that entire year.

Id. at 1. As Dr. Colvin noted in responding to APWU/USPS-T7-1 (response filed June 11, 2010), if one were to attempt to translate the estimated savings in the FY 2009 environment into savings estimates for later years, one would have to consider a wide variety of factors, some of which might reduce the savings estimates, and others of which might increase the savings estimates. Tr. 4/989-90.

As shown in Dr. Colvin’s Table 6 (USPS-T-7, page 18), the \$3.300 billion of gross costs savings can be broken down by function as follows:

Gross Savings for Five-Day Delivery In Terms of FY 2009 (in millions of dollars)	
Delivery:	
City Carrier	\$2,263
Rural Carrier	\$ 484
Transportation:	
HCR (w/o Boxes)	\$ 220
Air	\$ 62
Box Routes	\$ 35
MVS	\$ 59
Plant Processing	\$ 123
Post Office Operations	\$ 53
Total Gross Savings	\$ 3,300

Of the total gross costs savings of \$3.3 billion, as the table shows, a substantial majority (over 80 percent) consist of the estimated \$2.75 billion in carrier savings. In terms of carrier workhours, the Postal Service estimates that it will annually save nearly 50 million workhours from city carriers, and nearly 18 million from rural carriers. Tr. 4/901. See also USPS-T-6 at 19, 29. Of those \$2.75 billion in carrier costs savings, Prof. Bradley on the stand gave a ballpark estimate that approximately \$500 million relate to the so-called "absorption factor" issue (the ability of carriers to handle the volume shifted from Saturday to other days with less than proportional increases in street time hours on those other days), leaving about \$2.25 billion relating to fixed or institutional street and office activities. Tr. 4/958-59.

In summary, using a carefully considered analytic structure appropriate to the task, the Postal Service developed and presented detailed and well-documented estimates of cost savings by function. These estimates are grounded in the extensive efforts undertaken by Postal Service operations experts to determine on a very practical level how operations would be reconfigured to accommodate the contemplated service changes. Seasoned postal costing experts then translated the expected operational effects into dollar costs savings. Those saving estimates, including both direct and indirect components, totaled \$3.3 billion on a “full-up” annual basis.

F. Rigorous Market Research Informs Management’s Judgment Regarding Customer Reaction to Five-Day Delivery and Resulting Volume impacts.

Testimony in this docket that focused upon the market research starts with Postal Service witnesses Elmore-Yalch (USPS-T-8), a senior vice-president with well respected market research firm Opinion Research Corporation (ORC), and Gregory Whiteman (USPS-T-9), the senior manager of market research for the Postal Service.

To develop and support its Request for five-day delivery, the Postal Service engaged the services of a well respected market research company, Opinion Research Corporation (ORC) to explore customer reaction to the proposal; it then used what was learned from the qualitative research to undertake quantitative market research aimed at determining the magnitude of impacts on mail volume implementation of the proposal would bring. More specifically, the two phases of market research entailed:

- Qualitative research was conducted to evaluate how the proposed five-day delivery would impact consumers and businesses, and to test customers' understanding of the five-day delivery concept that was used in the subsequent quantitative research. The qualitative research helped USPS hone its proposal. Various features that were part of the original plan were dropped so as to minimize or mitigate some of the larger challenges various customer groups perceived. The five-day delivery concept that was tested in the qualitative research and used in the subsequent quantitative research was more restrictive than the current proposal. See USPS-T-9 at 15-16.
- Quantitative market research was conducted to provide a reliable estimate of the impact a five-day delivery schedule would have on product volumes, and consequent impacts on revenue and net contribution. This research employed the best of current industry standard practices as confirmed by a review of academic literature and by Dr. Peter Boatwright, Associate Professor of Marketing, Tepper School of Business, Carnegie Mellon University. See, USPS-RT-1.

Witness Elmore-Yalch's testimony discusses development and conduct of both the qualitative and quantitative market research. Market research results were used by witness Whiteman to develop estimates of volume impacts on respective products had five-day delivery been implemented by the start of fiscal year 2009. USPS-T-9 provides a top line summary of results on pages 1-3.

Overall, it was clear that a change from six- to five-day delivery will have an effect on (1) the volume of mail, (2) consequent Postal Service revenue and contribution, and (3) customers' perceptions regarding the level of service provided by the Postal Service. Perhaps most critical, consumers and commercial organizations can and will adapt to five-day delivery, and most would not experience significant impact on their daily mailing activities. The impact on volume would be relatively small, an estimated 0.71 percent volume decrease.¹⁹

¹⁹ See USPS-LR-N2010-1/NP2 for volume, revenue and contribution impacts and their calculation.

In addition to the Postal Service's own market research, other organizations, such as the *Washington Post* and ABC News, had conducted independent research showing that the American people and businesses want the Postal Service to remain financially viable that and most of them can adapt to five-day delivery as one way to reach that goal. See USPS-LR-N2010-1/1.

While the cost impacts of five-day delivery are in the millions of dollars, the consequent savings are in the billions, so small or even large errors in estimating those costs do not change the bigger financial picture.

1. The qualitative market research shows that consumers and smaller businesses generally can adapt to five-day delivery.
 - a. Focus Groups.

The Postal Service worked with ORC to conduct focus groups and in-depth interviews with customers to obtain comprehensive understanding of how customers will react to the change to five-day delivery and how it could impact them. The qualitative research was developed jointly by ORC and Postal Service experts and conducted by knowledgeable professionals familiar with related research conducted in the past; it accordingly capitalized upon both the results and procedural approaches taken in those studies. USPS-T-8 at 4-10; USPS-T-9 at 3-10.

Focus groups were used to learn about consumers' and small and medium businesses' attitudes toward and potential responses to five-day delivery. Focus groups are an interview methodology conducted by a trained moderator among a small group of respondents. Each interview is conducted in

an unstructured and natural way where respondents are free to share any perspective they care to provide. However, the moderator also guides the discussion to assure that various points become part of the discussion.

Consumers for focus groups were recruited to reflect the broad diversity of American households, including different regions, and urban, suburban, and rural households. Small and medium businesses were similarly recruited to reflect a range of industries and ways to use postal services (“applications”, USPS-T-8 at 2). USPS-T-8 at 4-10.

Focus groups are not designed to produce statistically representative results projectable to a population. Instead, they are designed to include a cross section of the population in order to understand how and why customers will react to specific proposals. Tr. Vol. V at 1171-72. Participants in the focus groups were all screened to ensure each was the person in the household or business with primary responsibility for the receipt, sorting, and other tasks related to the household or business mail and shipping. USPS-T-8 at 4-6.

Using open-ended questions (see USPS-T-8, Appendix C), customers were asked to discuss their current mailing activities: what they mailed, what they received, and how they used the mail they received or sent. They were then presented them a brief description of the current financial situation and asked whether they could suggest anything the Postal Service might do improve its financial situation.

Suggestions pointed to reducing service (offices, hours, delivery days); product changes were also suggested, as were service improvement and new

products. USPS-T-9 at 3-7. Participants also proposed a number of strategies that represented further reductions in service, improvements to service, or new products/services. Participants in all groups suggested they would be willing to make trade-offs, *i.e.*, give up some level of service to maintain the long-term economic vitality of the Postal Service. They further suggested that the decisions currently facing the Postal Service are similar to those facing businesses in general.

b. In-Depth Interviews.

The market research used in-depth interviews with individual executives from larger commercial organizations to assess their current mailing activity, how five-day delivery could impact them, and what they would do to adapt if five-day delivery were implemented. Interviewees were selected based on their responsibility for specific mailing applications such as billing or advertising. USPS-T-8 at 10.

Interviewees were generally receptive to the five-day delivery proposal as necessary to help resolve the Postal Service financial challenges. USPS-T-9 at 8. However, both general challenges and those imposed by the five-day delivery proposal upon particular business models also surfaced. The receipt of mail was one focus, with questions raised about Monday delivery volumes and disturbance in the flow of remittances to remittance processors. So was the flow of outgoing mail, where the need for communication with customers about possible changes in delivery expectations was identified. Naturally, business customers who could resort to internet communications also pointed out that possibility; these included mailers with financial transactions and publishers of Saturday newspapers. See USPS-T-9 at 8-10.

2. Qualitative market research summary and utilization.

One general observation consistent throughout the qualitative market research is that it showed across the full range of mailers and recipients that while five-day delivery does pose some challenges, most customers can adapt their mailing activity to the change with little difficulty. The qualitative research shows that most customers can reasonably adapt and will accordingly accept five-day delivery with the understanding that it is necessary (although perhaps not sufficient by itself) for the long term financial stability for the Postal Service.

The qualitative research results were also used to modify the original five-day delivery concept and mitigate some specific mailer challenges. The Postal Service determined, for example, not to close Business Mail Entry Units (BMEUs) on weekends; weekend Express Mail collections were also restored. USPS-T-9 at 15-16; *see also* USPS-T-1. However, the Postal Service did not modify the five-day delivery operational concept used in the qualitative market research when it subsequently fielded the quantitative market research. This had the salutary effect of making the estimate of volume losses derived from the quantitative research conservatively high. USPS-T-9 at 16.

Furthermore, the qualitative market research results are notably consistent with research conducted by third parties in that most customers have consistently indicated an expectation they can adapt with relative ease to changes brought on by five-day delivery. This is true for independent polls conducted by Gallup, Rasmussen, USA Today/Gallup Poll and Washington Post/ABC News in 2009 and

2010.²⁰ These polls show that a majority of Americans would prefer to cut the number of days mail is delivered, rather than face substantial price increases, so as to ensure the financial stability of the Postal Service. The March 2010 Rasmussen poll shows that 58 percent of Americans favor five-day delivery. The March 2010 Washington Post-ABC News poll shows that 71 percent of the Americans favor ending Saturday delivery. The March 2010 Gallup Poll found that 68 percent of Americans favor reducing mail delivery to five days.

The ORC findings are also consistent with the results of a survey of MTAC (Mailers Technical Advisory Committee) members conducted in August 2009. That survey of 4,100 found that 65 percent favor going to five-day delivery and 65 percent are very or somewhat optimistic that their business will be able to adjust to five-day delivery. USPS-LR-N2010-1/1.

This consistency also extends to a survey conducted by Maritz on behalf of the Postal Service in August 2009, with 1,047 residential and 1,144 small business (250 employees or fewer) customers. The Maritz survey²¹ found:

RESIDENTIAL

- 98 percent said that it is important for the Postal Service to remain in business.
- 68 percent are in favor of Five-Day Delivery.
- 60 percent said the Five-Day Delivery plan would have no impact.

SMALL BUSINESSES

- 97 percent said that it is important for the Postal Service to remain in business.
- 68 percent are in favor of the Five-Day Delivery plan.

²⁰ See USPS-LR-N2010-1/1.

²¹ USPS-LR-N2010-1 at 27-28.

- 69 percent said the Five-Day Delivery plan will have no impact
- 55 percent said Saturday delivery is unimportant.

Witness Whiteman usefully summarizes these various research results in his testimony:²²

The most significant overall finding from the focus groups was that most consumers and small commercial organizations said that elimination of Saturday delivery to street addresses would have little impact on their consumer or commercial requirements. Most said they would adapt. This is not to imply there would be no adverse impact. Rather, most agreed adaptation would not be difficult.

In summary, the qualitative research shows that most businesses and consumers can accept five-day delivery if it is necessary to help the Postal Service regain its financial stability. Most businesses and consumers would not accept a significant price increase in lieu of eliminating Saturday delivery as a better way to solve the Postal Service's financial difficulty, especially since they do not see a price increase alone as ensuring the long-term survivability of the Postal Service.

3. The quantitative market research provides an accurate and reliable basis for estimating volume, revenue and contribution impacts.

The Postal Service and ORC followed their qualitative market research

²² See USPS-T-9 at 4-5, 9. These can be summarized as follows: Consumers have distinct weekday mail habits that already differ from Saturdays, so if Post Offices remain open on Saturday they can readily adjust. Businesses may already leave Saturday mail for attention on Monday. Mailing activity can readily be advanced one day. The Postal Service is a business just like any other; service adjustments are a routine business response to financial challenge. Yet mail still serves business and consumer needs.

with quantitative market research that also involved consumers and commercial organizations. The consumer market research was designed to be representative of American households, reflecting their diversity, by using ORC's CARAVAN® telephone omnibus survey. As with the qualitative research, respondents were carefully screened to ensure that they were the persons in the household knowledgeable about the type and volume of mail sent. See USPS-T-8 at 11-17.

To ensure representation of all businesses, the commercial market research sample was stratified by mail volume (*id.*, p. 11) to include:

- Small commercial mailers;
 - Preferred commercial mailers (those who use one or more commercial product, *e.g.*, Standard Mail) with small annual volumes;
 - Premier commercial mailers with large annual volumes; and
 - National commercial mailers with very large annual volumes.
- Participants were screened to ensure that the individual interviewed was

the person in the business with the greatest knowledge regarding the volume of mail or packages sent by the business.

Consumers were asked to estimate their mailing volumes and what their volumes would have been had five-day delivery already been implemented. As part of this process, we presented all customers with a proposed operational plan, similar to the proposed plan used in the focus groups so they were aware of the proposed changes that would occur with the implementation of five-day delivery.

In conformity with survey research industry standards,²³ respondents were provided with the proposed operational plan and asked the likelihood their mail

volumes would change in a five-day delivery environment (using a scale of 0 being “not likely” and 10 being “very likely”) before being asked to provide their expected five-day delivery mail volumes. See, e.g., USPS-T-8 at , p. 12.

Businesses were asked to estimate their mailing volumes in the 12 months prior to the survey as well as their estimated volume in the next twelve months. As with consumers, businesses were read a description of the five-day delivery schedule and asked the likelihood their mail volumes would change in a five-day delivery environment. They were then asked to provide their estimated volume by application and product in the next twelve months assuming five-day delivery.

The quantitative market research confirms the qualitative market research and independent polls in that 61 percent of business customers and 74 percent of consumers, depending on the application, said it was extremely unlikely that five-day delivery would cause them to change their mailing volumes. Tr. Vol. V at 1290.

Overall, the quantitative research clearly supports what we learned from the qualitative research, demonstrating that customers will adapt to five-day delivery. Further, the impact on volume and revenue will be slight, with an estimated reduction of 1.244 billion pieces or 0.71 percent, producing a loss of \$466 million or 0.75 percent in revenues and \$206 million in net contribution.

USPS-T-9 at 2-3.

G. Stark Circumstances Compel The Pursuit of Greater Efficiency And Corresponding Adjustments To Service

The totality of circumstances that compel the Postal Service to seek an

instant advisory opinion on service changes are neither mysterious nor, in broad outline, subject to any serious dispute. They are set forth in full detail in the direct testimony of Joseph Corbett, the Postal Service's Chief Financial Officer (USPS-T-2). They are fundamentally the same circumstances which underlie the Postal Service's March 2nd Action Plan, of which the contemplated delivery frequency changes are but one component. While undoubtedly exacerbated by the continuing effects of the recession, they also reflect long-term evolution in the purposes for which customers utilize mail, versus various alternative media options. As Mr. Corbett testifies, these circumstances led the Postal Service to conclude that the reduction in street delivery from six days per week to five days is both "necessary and unavoidable." USPS-T-2 at 2.

Mr. Corbett paints the big picture very succinctly:

The Postal Service is now in dire financial condition. Precipitous and historic declines in mail volumes and revenues, combined with the growing costs of our expanding delivery network, as well as the massive new costs imposed by postal legislation, have resulted in a grave and unsustainable financial imbalance. Despite prudent management of our business and aggressive cost cutting in response to these dramatic changes in the mail marketplace, we have reported a net loss in each of the last three fiscal years and expect to do so again this year.

Id. at 3. The grim financial results from the recent past are beyond cavil, and an equally grim prognosis for the near future seems to be as well.

This is because, as Mr. Corbett explains, the Postal Service's business model is volume dependent. *Id.* at 7-8. As the number of delivery points grows each year, growth in mail volume is necessary to maintain stability in the average number of pieces delivered to each delivery point every day, which in turn allows

the generation of sufficient revenue to cover the growing costs of the delivery network. While the costs of the delivery network in large measure do not vary with volume, they do vary with the size of the network (i.e., the number of delivery points). If volume falls while delivery points grow, the average volume per delivery point per day declines, and the stage is set for serious financial difficulty.

As Mr. Corbett testifies, that is exactly the scenario in which the Postal Service now finds itself. In fiscal year (FY) 2000, the average of pieces per delivery point per day was approximately 5 pieces, while in FY 2009 it had fallen to less than 4 pieces. *Id.* at 11-12. Moreover, exacerbating the deterioration in average volume per delivery point per day is a change in mail mix that, even if average volume per delivery point were constant, would be reducing average revenue per delivery point per day. *Id.* Electronic diversion is primarily reducing relatively high contribution First-Class Mail, and thus not only is the average number of pieces delivered daily to each delivery point declining, but the revenue generated by those pieces is declining even more rapidly. The combined effect of volume losses and mail mix changes ultimately creates inexorable pressure to change the financial equation somehow, either through operational changes, offsetting increases in average revenue per piece (i.e., rate increases), or alternative funding for the network from some other source.

Of these choices, operational changes constitute the only feasible option. With enactment of the Postal Accountability and Enhancement Act and its price cap regime, the Postal Service no longer has the ability to routinely utilize above-

inflation price increases to offset revenue deficiencies caused by long-term structural changes in the demand for postal services. Alternative funding sources would necessarily involve Congressional appropriations to support delivery operations, and presently there is no realistic basis to expect the Federal Government to be willing to undertake such a commitment. Moreover, as Mr. Corbett testifies, the Postal Service at this time is likewise not interested in seeking such a subsidy. *Id.* at 14. On the other hand, by reducing normal weekly street delivery days from six to five, the Postal Service can directly and immediately reverse the decline in average pieces per delivery point per delivery day. Mr. Corbett indicates that the proposed change will push average pieces and revenue per delivery point per day back up to a level commensurate with the level experienced in fiscal year 2003. *Id.* at 15.

Mr. Corbett further explains why an operational change focusing on delivery is most appropriate. *Id.* at 12-13. Over the last several decades, strides in automated mail processing have allowed the Postal Service to make substantial inroads towards handling mail more efficiently and reducing its career workforce. But automation has had greater impacts in areas other than delivery. For example, the percentage of career delivery craft employees (city and rural carriers) out of total career major craft employees (carriers plus clerks and mailhandlers) has risen from 45 percent in FY 1990 to 47 percent in FY 2000 to 54 percent in FY 2009.²⁴ Mr. Corbett explains the significance of these developments in an era of declining mail volume:

²⁴ The relevant career employee figures by craft can be found in the Annual Report of the United States Postal Service for each of those fiscal years.

Simply stated, as the Postal Service has continued to reduce the number of employees and expenses in these other functional areas that are smaller and more responsive to changes in volume, such as mail processing, the inherently greater fixed-cost nature of the carrier network prevents commensurate reductions in the larger costs of delivery.

Id. at 13. In other words, as delivery costs become a larger portion of total costs, the Postal Service's ability to deal with volume losses becomes more constrained. Reducing the number of delivery days, leading to cost savings that consist mainly of relatively "fixed" network costs, directly addresses this conundrum.

Section 403 of title 39 makes very clear that while postal services must be "adequate," they must also be "efficient." An extreme example demonstrates the balancing required between these sometimes competing objectives. Suppose we knew that, under the current six-day delivery regime, the average daily cost of providing street delivery service to each delivery point was 60 cents, and yet the average daily postage generated by the pieces actually being delivered was only 50 cents. In this extreme example, even without considering the additional retail, mail processing, and transportation costs associated with those pieces, we know that the economics of this situation would be unsustainable. The Postal Service cannot pay carriers more than the value to it of the mail pieces they are delivering. Yet if the Postal Service in this hypothetical were to reduce the number of delivery days from six to five, the same weekly postage revenue per stop (50 cents times 6 days, or \$3.00), spread over one fewer day, would yield average daily postal revenue of 60 cents (\$3.00 divided by 5 days), the same as our assumed daily delivery cost. Under this scenario, it would seem quite difficult

for anyone to argue that the result of the one-day reduction in weekly street deliveries would not be an improved balance between “adequate” service and “efficient” service. Specifically, any suggestion that five-day service was inadequate under these circumstances would be as untenable as any suggestion that the six-day service was efficient.

Clearly, as noted, this simplistic example is extreme, and the Postal Service does not purport to suggest that the “right” answer in the much-more-complicated real world is anywhere near as obvious as in this hypothetical. Yet this exercise frames the forces that are at work. Overall, as Mr. Corbett testifies, under both status quo conditions and those reflecting full utilization of available management initiatives, the Postal Service anticipates total costs outstripping total revenues in both the near and long terms. USPS-T-2 at 3-4. Furthermore, both average volume per delivery point per day and average revenue per delivery point per day are expected to continue to decline. *Id.* at 11. While theoretical mail mix changes which *increased* average revenue per piece could potentially offset declines in average daily volume, unfortunately, the trend is working in the exact opposite direction. Actual mail mix changes are *decreasing* average revenue per piece, thereby exacerbating the effects of the reduction in average delivered pieces per delivery point per day. Between the fixed costs of maintaining a six-day-per-week delivery network and the declining average revenue per delivery point per day, something has to give. As Mr. Corbett indicates, postal management has determined under these circumstances that what makes the most sense to change this equation is a reduction in the number

of delivery days per week from six to five. *Id.* at 11-12. Such a change responds directly to the requirements of section 403, in both subparts (a) and (b), that delivery services be “efficient.”²⁵

H. The Service Changes Reflect A Faithful Pursuit of Applicable Statutory Policies.

A plan to change regular street address mail delivery from six days to five days per week would permit the Postal Service to continue to bind the nation together through the personal, educational, literary and business correspondence of the people, to do so adequately, but in a more efficient and economical manner. See 39 U.S.C. §§ 101(a), 403(b)(1), 3661(a). The continuation of Saturday retail and bulk mail entry operations, as planned, would be consistent with the mandate in subsection 403(b)(3) that the customers continue to have ready access to essential postal services. The exemption of Express Mail from any of the changes and the continuation of Post Office Box delivery of mail on Saturdays combine to preserve the expeditious collection, transportation, and delivery of important letter mail within the meaning of subsection 101(e). Deferral of some mail processing activities from Saturday to Monday would be consistent with reasonable economies of postal operations. See 39 U.S.C. §§ 101(a),

²⁵ Mr. Corbett also discusses a unique advantage to pursuing the shift to five-day operations over the next several years that will dissipate thereafter. As Mr. Corbett notes on page 16 of his testimony, 44 percent of the current workforce is either eligible to retire now, or will become eligible between now and 2014. After that year, the number of new retirement-eligible employees will fall dramatically. If the shift to five-day coincides with the retirement of an unusual proportion of employees, the corresponding reduction in the workforce would be smoother than if the shift occurred sometime *after* a retirement spike. In the latter case, the Postal Service would already have hired new employees to replace the retirees, and would thus face the more daunting prospect of reducing complement with a smaller proportion of normal voluntary retirements.

403(a), 403(b)(1), 403(b)(3) and 3661. The planned service changes may not affect all customers in a perfectly equal manner. Reasonable adjustments will be made for delivery routes in rural areas that currently receive delivery fewer than six days per week, consistent with subsection 101(b). However, the service changes planned here are not improperly discriminatory and reflect that no undue or unreasonable preferences have been granted. 39 U.S.C. § 403(c).

The statutory scheme governing the national postal system permits the Postal Service considerable flexibility to make rational adaptations to market and fiscal realities, while still fulfilling its public service obligations. That scheme does not require that long-standing products, service features, and operational practices and customs be maintained primarily for the purpose of preserving a tangible link to tradition, or to perpetuate a nostalgic or iconic image of the agency or its employees.

V. The Intervenor Testimonies Provide Insubstantial Evidence.

If a groundswell of record evidence seriously challenging the Postal Service's request in this docket was expected, it did not materialize. In the rebuttal phase of this docket, intervenors submitted written testimony of 10 witnesses: Medco Health Solutions (Medco), the National Association of Letter Carriers (NALC), the National Newspaper Association (NNA) and the Public Representative (PR). By operation of Presiding Officer's Ruling No. N2010-1/26 (August 23, 2010), Medco was permitted to withdraw its testimony.

Below, the Postal Service reviews most of the remaining intervenor testimony and explains why none of it presents record evidence sufficient to justify an advisory opinion from the Commission that the service changes being planned for the reasons explained by the Postal Service are inconsistent with the policies of title 39. The intervenor testimony does not rebut the Postal Service's explanations of the operational changes it will implement or the estimates of the costs expected to be saved when the operational and personnel changes are fully implemented. Much of the intervenor testimony repeats variations of the same unsubstantiated allegations of adverse impact on the same categories of mail recipients, but lacks substantial or probative supporting information for such claims. Various intervenor allegations of adverse reactions by mail senders and potential impact on mail volumes also are devoid of any supporting data and rely on thin anecdotal observations. Notwithstanding the Commission's admonition that failure to provide relevant and material information in support of their claims will be taken into account in determining the weight to be placed on their

evidence and arguments. 39 C.F.R. § 3001.20a(c). The absence of specific allegations of harm bears on the Commission's consideration of the potential adverse effects of Postal Service proposals. See PRC Op. R2000-1 at 5786. As explained below, for these and other reasons, the parties' testimony should be accorded little weight by the Commission.

A. NALC Witness Riley's Wishes Are No Substitute for Action.

Some have questioned the Postal Service's assessment (as presented by Mr. Corbett, USPS-T-2) of the financial necessity for the change in the number of delivery days and making the related service changes under review. For example, Dr. Riley, testifying on behalf of the National Association of Letter Carriers (NALC), reaches a conflicting conclusion:

Contrary to the Postal Service's assertions, eliminating Saturday delivery is not necessary to improving its finances. In my opinion, what the Postal Service needs is a reasonable price increase for market-dominated products, relief from the PAEA's unfair retiree health pre-funding requirement and a revival of the economy.

NALC-T-5 at 8. Obviously, the Postal Service would likewise be gratified to see reasonable price increases for market dominant products, relief on the Retiree Health Benefit Funding (RHBF) front, and a revival of the economy that led to historical increases in postal volume and revenue. Yet all three of these objectives are outside of the control of the Postal Service, and wishing for each of these things to happen cannot reasonably substitute for efforts on alternative steps which the Postal Service can and must undertake now. Indeed, recent weeks have seen the Postal Service stymied in its requests for a moderate exigent increase for market dominant products, and for legislative relief at the

end of fiscal year 2010 regarding required RHBF payments.

Likewise, while by some measures the economy has perhaps been reviving, by other measures it has not. Certainly it would be foolish for either the Postal Service or the Commission to assume that an upsurge in the national economy is sure to solve the Postal Service's financial woes in the short term, in the medium term, or in the long term. To suggest that "uncertainty" seems to be the only common element of virtually all recent economic forecasts is to state the obvious. "Uncertain" is also the very best that can be said about the prospects in the near term for reasonable increases in market dominant product prices, or legislative relief (regarding either RHBF, Civil Service Retirement System overpayment, or both). Despite the hopes of Dr. Riley and other similar observers, the Postal Service's financial situation is dire, and responsible stewardship requires that progress must continue in preparations for necessary changes in the operating structure, including the contemplated shift from six-day to five-day for street delivery and related operations and services.

- B. The testimony of Postal Service witness Boatwright neutralizes the criticisms offered by NLAC witness Crew.

NALC witness Crew (NALC-T-4) raises various criticisms of the Postal Service projections for the financial implications of implementing five-day delivery. In short, it appears he conducted a surface review that did not extend to review of the actual analyses underlying the Postal Service projections of five-day delivery's cost savings or the costs the Postal Service projects would accompany implementation. Moreover, Dr. Crew's criticisms are based on his

opinions and experience as an economist. He has no experience managing or directing market research.

When the Postal Service cross examined Dr. Crew about those materials he may have reviewed, whether in preparation for the drafting his testimony or in advance of his appearance on the witness stand, it became apparent that Dr. Crew had not examined most of the materials the Postal Service provided to support its Request. Tr. Vol. VIII at 2431-49.²⁶

Dr. Crew's criticisms, moreover, amount to little more than the legal world's aphorism that anything is possible; he makes consistent use of words such as "may" (19 uses), "could" (17 uses) or "might" (2 uses), never actually asserting that any of his opinions are deserving of greater weight. The Postal Service is equally prepared to concede that anything Dr. Crew asserts "may" be true; however, witness Crew's failure to articulate reasons in support of his speculation graphically illustrates the paucity of content his testimony embodies, how little guidance it offers the Commission, and accordingly, how little

²⁶ For example, Dr. Crew responded when asked if he had reviewed all the Postal Service testimony that he was "pretty sure [he] did." Tr. Vol. VIII at 2431. When asked about review of library references, the only one he could identify—" [he] briefly looked at that one" (*id.*) was one produced by NALC. More critically, Dr. Crew never reviewed the Postal Service public report on the need for five-day delivery, USPS-LR-N2010-1/1, (*id.* at 2445), or any of the various market research library references (*id.* at 2444-49), although part of one library reference "look[ed] vaguely familiar". Nor had Dr. Crew reviewed the seminal document in this proceeding, the Postal Service Request. *Id.* at 2436. Furthermore, while Dr. Crew claimed to have reviewed Postal Service interrogatory responses, he could recall no details of what he had reviewed and was unable even to confirm if they related to market research. *Id.* at 2443. Dr. Crew did not review any of responses to Chairman's Information Requests or materials filed under seal. *Id.* at 2444. Hence at best Dr. Crew's opinions were based on an exceptionally thin review of materials filed in the case; the Commission should weigh his testimony accordingly. Similarly, his interrogatory responses, claimed to be the best he could possibly give (*id.* at 2461), should simply be dismissed from consideration.

evidentiary weight it should be accorded. The testimony of Postal Service surrebuttal witness Dr. Peter Boatwright (USPS-RT-1) explains with eminent clarity why Dr. Crew's lightweight claims should be dismissed and provides detailed descriptions of the technical, scientific and logical grounds for his own conclusions.

More specifically, witness Crew variously claims (1) that volume losses flowing from five-day delivery "could erase" substantial portions of the Postal Service's projected savings (NALC-T4, p. 2); (2) implementation "may" be more expensive than the Postal Service projects (*id.*); and (3) five-day delivery "could" worsen the Postal Service financial position by volume diverted to competitors (*id.*).

With respect to the first of these, witness Boatwright makes the point that even if volume losses are grossly underestimated, the magnitude of the overall cost savings nonetheless dwarf any costs arising out of five-day delivery. The same is true for any increases in implementation costs or for revenue lost to diversion. The possible millions of dollars lost in various costs still pale in light of the billions of dollars in annual savings. USPS-RT-1 at 25-27; Tr. 11 at 3141-43.

Witness Crew asserts that mail volume will decrease (Tr. Vol. VIII at 2367); since Postal Service testimony, based on quantitative market research reaches the same conclusion, there is little point in disagreeing with Dr. Crew. Yet he fails actually to examine the market research sufficiently to address—or attempt to rebut—testimony of witness Whiteman that while various products will see very modest volume decreases, volume increases are also part of the

picture. See USPS-LR-N2010-1/NP2 (e.g., consumer use of Priority Mail is projected to increase in a five-day delivery environment). Moreover, Dr. Crew's claim that five-day delivery will open the door to other companies apparently does not recognize that the Postal Accountability and Enhancement Act of 2006, expressly acknowledges that Postal Service products do already, as a matter of fact and law, face real market competition.

Other of Dr. Crew's assertions also lack credence. On page 2367 of Tr. Vol. VIII, for example, he asserts that the loss of Saturday delivery—on the street—a qualification he fails to acknowledge will necessarily chase volume to competitors; what Dr. Crew fails even to address is the market research finding that many customer are prepared to adapt to the lack of Saturday delivery so long as Post Offices remain open on Saturdays, which is exactly what the Postal Service proposes for five-day delivery.

Dr. Crew also criticizes the market research for reporting point estimates. This point was also raised in cross-examination of the Postal Service market research witnesses (Tr. Vol. V at 1290), with the result that confidence limits were subsequently provided long before Dr. Crew's appearance on the witness stand. See Response of Postal Service witness Whiteman to Question Posed at the July 21, 2010 Hearing (July 29, 2010).

In his testimony, Dr, Crew addresses several specific points that were later explained and rebutted in substantially greater detail by Postal Service witness Dr. Boatwright (USPS-RT-1). These include: (1) implementation of five-day delivery will produce a mail volume decrease; (2) use of a likelihood scale to

estimate the volume impact constituted a major procedural flaw; (3) ORC's approach introduced bias; (4) lag time between estimation of volume impacts and any implementation of five-day delivery makes the quantitative market research based estimates of volume loss unreliable; and (5) the failure to use additional tools, such as econometrics, to evaluate possible volume loss.

The Postal Service agrees that volume loss is a likely outcome from implementation of five-day delivery, which is why the market research was undertaken to conclude that a 0.71 percent volume decrease is projected. Dr. Crew's analysis stems from the straightforward observation that eliminating one day of street delivery constitutes a decrease in service quality, such that—all else equal—a service quality decrease should also lessen demand. Each of the criticisms lodged by Dr. Crew against the market research estimates is answered in detail by Dr. Boatwright.

Dr. Crew asserts that use by ORC of a likelihood factor constitutes a flawed approach. NALC-T-4, p. 6. However, Dr. Crew simply fails to recognize that the likelihood factor is a foundational formula in statistics (expected value), and is therefore mathematically required. Hence the Postal Service/ORC volume change estimates would be flawed if no likelihood factor were used. Dr. Boatwright clearly demonstrates that the use of such a scale is entirely appropriate and frequently used when forecasting the impact of a new product introduction or a major change in a current product.

The ORC likelihood scale measured purchase intent. Purchase intent

measures²⁷ are routinely used in market research, for forecasting in general and for new product testing. USPS-RT-1 at 8; Tr. Vol.11 at 3124. Dr. Boatwright continues:

It has been stated that “the single best predictor of an individual’s behavior will be a measure of his intention to perform that behavior.” On both theoretical and empirical grounds, intention measures are believed to improve estimates of future actions. Some benefits of purchase intentions are that they allow respondents to assess their own behavior after independently considering possible factors that may contribute to a purchase decision, including factors that are dynamic. Use of purchase intentions is prevalent for new product research to the extent that “the buying intention question appears in almost every concept test.

USPS-RT-1 at 10 [footnotes omitted]; Tr. Vol. 11 at 3426. Dr. Boatwright observes that ORC’s calculation of estimated volume change follows a commonly used statistical measure called the “expected value.” USPS-RT-1 at 10-11.

Dr. Crew worries that volume calculations are estimates rather than certain quantities. In particular, he noted that uncertainty would be due to three identified sources: (1) customers are estimating their own future behavior, (2) that surveys must account for potential bias in responses, and (3) that the market is dynamic. NALC-T-4, pp. 4-9; Tr. Vol. VIII at 2368-73. The Postal Service/ORC already recognized these sources of uncertainty, identifying them as normal elements in decisions about future products/services that should be accounted for in a decision about the future of the Postal Service. The Postal Service/ORC quantified the uncertainty in more than one way, finding that, even

²⁷ Measures of the likelihood that customers will purchase a given product or service or, in this case, likelihood that customers would change their behavior if Saturday street delivery is eliminated.

accounting for uncertainty; the cost benefits from five-day delivery far outweigh the impact of the volume reductions.

Dr. Crew in his testimony at Tr. Vol. VIII at 2368-69 raises the issue that customers may have provided unreliable volume estimates as the proposed description of five-day delivery implementation was hypothetical, they did not have enough time to study the proposal, and were asked to provide an estimate at just one point of time. At page 3130 of Tr. Vol. 11, Dr. Boatwright acknowledges that research may face sources of bias. However, knowing this, market research suppliers undertake great effort to address this issue. ORC did, too:

A general procedure in such research is to identify sources of uncertainty, identify appropriate strategies that may help reduce that uncertainty, and analyze gathered information with the intent of reducing the uncertainty inherent in all business decisions—thereby improving the value of all information collected to inform the decision being considered. ORC took this exact approach to address potential bias... .

Id. Dr. Boatwright goes on in great detail (Tr. Vol. 11 at 3130-34) discussing the steps ORC took to address the issue of bias. He concludes:

The potential for bias in survey research is well recognized in practice and provides a sound argument for using professional research firms such as ORC to design and implement such surveys. The methods used by ORC are consistent with those used in practice by other professional market research firms; the research protocol, procedures and materials are designed to address potential biases that exist in such studies. Properly designed research makes the results reliable, all of which explains why market research firms' results routinely inform the critical business decisions of those who hire them.

Id. at 3134.

Dr. Crew's accurate observation that the Postal Service did not conduct all

possible examination is, of course, tautological. More study could also be undertaken, says Dr. Crew, who fears the customer survey does not provide enough evidence for the decision. Tr. Vol. VIII at 2371. Specifically, Dr. Crew argues that the Postal Service should have done an econometric study to predict future behaviors. Dr. Boatwright clearly does not agree that additional analyses are needed:

I discuss each of these below, after clarifying that the ORC analytical approach embodies the industry standard, not an inferior alternative; ORC's general approach has even been found superior to model-based approaches in certain estimation problems similar to the one at hand here.

Tr. Vol. 11 at 3136. Dr. Boatwright then discusses in detail why an econometric model and discrete choice research would not provide better information and could produce less reliable information. An econometric model would require use of historical data for which none are available. He further observes that data from posts in other countries would not help because the nature of the businesses varies so much while the delay necessary to conduct additional studies is itself expensive:

In summary, alternative analytical approaches have been proposed in hindsight. It is not clear whether alternative analyses would be more or less accurate than the ORC study. A critical question at this point in analyzing the five-day delivery proposal is the value of conducting an additional study. From a financial viewpoint, the costs of an additional study are quite large (>\$1.55B), and the financial benefits are, at best, very small relative to the costs. Hence, the answer is quite clear: financially speaking, the five-day delivery proposal should not be delayed for additional estimation of future mail volumes.

Tr. Vol. 11 at 3142-43. Thus, despite witness Crew's concerns, firms consistently make product decisions based on customer feedback through

surveys. When the financial estimates of costs versus benefits are close, additional study may be warranted to gain precision. But here, the Postal Service's financial analysis reveals that cost savings dwarf any revenue implications, making additional study unwarranted and wasteful.

The qualitative and quantitative market research undertaken jointly by Opinion Research Corporation and the United States Postal Service began with qualitative evaluation of customers' reactions to five-day delivery, the challenges it would present for mailers and addressees, and their interest in and ability to adapt—if necessary—their patterns of using the mail in their lives. That analysis highlights particular challenges the Postal Service was able to address, in part, by modifying aspects of its five-day delivery proposal. It also shows that most customer groups, and most uses or “applications” for mail, would not incur substantial harm. Indeed, the primary lesson seems to be that most consumer and business customers can adapt readily to a five-day delivery environment.

The qualitative research also facilitated the development of materials used in the more rigorous quantitative research aimed at estimating the direct volume loss consequences expected from implementation of five-day delivery throughout the domestic service area. In addition, results from the qualitative research were used by the Postal Service to modify its proposal. Since the description of five-day delivery used in the quantitative analysis was similar to that used in the qualitative phase and did not reflect the final Postal Service proposal, the description of five-day delivery used in the quantitative research actually reflected more change to level of service than now planned; as such, the quantitative

research estimates of volume loss should be conservatively high. But even if those estimates actually prove low, the financial benefits—repeated year after year—of five-day street delivery to residences and businesses are at least an order of magnitude larger than consequences such as lost mail volume and implementation or transition costs.

The Commission should accordingly take the market research estimates of volume changes for respective products at face value, and use them in fashioning its advisory opinion. It should also recognize that the market research served as an effective communication tool that broadened shared understanding of what five-day delivery will entail for respective customer groups. The research was conducted using the best of industry standards to develop high quality results. Claims to the contrary reflect parties' general opposition to five-day delivery or tautological criticisms of market research that can always be wielded regardless of the proposed changes themselves or how they are studied. The Commission should rely upon the market research in its advisory opinion for the simple reason that it was comprehensive, exceptionally well-executed and produces highly reliable probative and substantial evidence.

C. Nostalgic Recollections and Anecdotes of Noble Employee Actions Provide No Meaningful Basis for Complex Policy Determinations.

As part of its opposition to the planned service changes, the National Association of Letter Carriers presents the testimony of its current President, Frederic Rolando (NALC-T-1; Tr. Vol. X at 2830.) As explained below, witness Rolando's contributions to the record succeed in burnishing the image of letter

carriers but do little to inform the Commission about the complex cost, volume impact, and policy issues raised by the Request in this docket.

1. NALC witness Rolando's dated anecdotes pale in comparison to the customer outreach and market research.

The testimony of witness Pulcrano (USPS-T-1; USPS-LR-N2010-1/1) describes the extensive customer outreach performed by the Postal Service and the testimony of witness Elmore-Yalch (USPS-T-8) reveals the comprehensive qualitative and quantitative market research conducted by Opinion Research Corporation in order to assess the potential impact on mail volume that the service changes under review might yield. As a counter-weight, NALC offers the testimony of witness Rolando. He bases his concerns about potential adverse impact on postal customers that could result from the planned service changes largely on his anecdotal recollections about delivering mail on a single mixed residential/business letter carrier route in Florida from the late 1980's to the late 1990's. Tr. Vol. X at 2833, 2860. He provides no basis for the Commission to conclude that his recollections are representative of or relevant to the current mailing environment. Under cross-examination, he admits that he has performed no assessment of whether there has been any change in mailing practices or mail recipient behavior on his old route since his experience several decades ago. *Id.* at 2846. And despite the practice of advertising being targeted for Saturday delivery decades ago, he concedes at page 2859 that some merchants could adapt and target their advertising mail to be delivered to Saturday shoppers on Friday.

In a more contemporary vein, he asserts that residential postal customers

who shop online but work during the week depend on Saturday package delivery. *Id.* at 2833. He provides no evidence of the degree of that dependence or any rebuttal to the findings of witness Elmore-Yalch that the overwhelming majority of such customers expects to be able to adjust and continue to rely on the Postal Service. He claims without qualification that they will be driven to use postal competitors' services, but does not explain how they will overcome the fact that these competitors do not offer routine Saturday delivery. There is no analysis or quantification associated with his speculation at page 2844 that "if USPS stops delivering packages on Saturday, either current or future competitors will seek to capture that business."

2. Witness Rolando provides no insight into the impact of the service changes on elderly or rural postal customers.

Witness Rolando draws the Commission's attention to the alarming prospect of "elderly or rural residents who depend on the mail for the delivery of their medication" who "could be forced to go for an entire weekend without." *Id.* at 2833. He concedes that he has no intelligence regarding pharmaceutical shipment fulfillment and mailing practices, or how customers today or in the five-day world could find themselves in such circumstances. *Id.* at 2860-62. He merely declares that "[t]here is a chance" that such circumstances could arise. *Id.* at 2861.²⁸

Mr. Rolando alludes to the positive environment benefit of the reliance by private delivery competitors' on the Postal Service's last-mile network that results

²⁸ At page 2833, he references testimony provided in one of the Commission's Docket No. N2010-1 field hearings. However, he cannot be held responsible for knowing that the Administrative Procedure Act and the Commission's own rules preclude reliance upon that testimony as evidence in this docket.

in fewer delivery vehicles on the road and fewer greenhouse gas emissions. Tr. Vol. X at 2837. He testifies that “[i]t makes good financial sense to hand off deliveries to the Postal Service in neighborhoods in which the USPS delivers to every household every day.” *Id.* However, his testimony does not suggest or explain how the elimination of Saturday delivery by the Postal Service would reverse any of the positive environmental benefits currently being experienced. See Tr. Vol. X at 2837, 2872-73.

Mr. Rolando expresses concern that the elimination of Saturday delivery to street addresses “will also eliminate one of the Postal Service’s unique, irreplaceable human connections to the public.” *Id.* at 2834. He worries that the bond generated by the occasional encounter between residential customers and their letter carriers may be lost and is critical to the Postal Service’s success. *Id.* His testimony informs us that senior citizens on his old route were particularly pleased to see him every day (Tr. Vol. X at 2834), but he otherwise provides little meaningful information regarding the quality and quantity of customer/carrier encounters generally, or their impact on the retention or growth in mail volume. He ultimately concedes that the “key connection” is created by the *delivery* of mail, not whether a residential recipient saw or had an encounter with the carrier who delivered it. *Id.* at 2855. He concedes that there are alternative ways for the Postal Service to attract customers to use postal products than to rely on bonds based upon occasional encounters they may have with their letter carriers. *Id.* at 2874.

Importantly, witness Rolando also acknowledges that the bond that would

be lost by the elimination of delivery to street addresses on Saturdays is only *one* of the *unique* bonds that the Postal Service has with its customers. He grudgingly concedes that letter carriers are not the sole source of the Postal Service's standing in the results of the Ponemon Institute study as the most trusted government agency for privacy. Tr. Vol. X at 2489. 2834-35. The Commission should infer that the *other unique* bonds between the Postal Service and its customers include the ones generated by the provision of efficient and economical acceptance, processing, transportation and delivery service Monday through Friday by carriers, clerks, mailhandlers and the managers who guide them. They will remain intact when the service changes at issue here are implemented.

3. Witness Rolando's summary of the good deeds of letter carriers has no bearing upon the request in this docket

Witness Rolando is understandably proud to report that there are occasions when letter carriers on their routes randomly encounter situations that impel them to do what we all would hope any socially responsible citizen to do – render or obtain aid for a fellow citizen in distress. Likewise, the annual one-day NALC Food Drive indisputably provides a social benefit by facilitating the local redistribution of non-perishable food items from the more to the less fortunate. The Postal Service is proud of the hard work that all of its employees perform on a daily basis and especially proud of those whose commitment to community compels them to act as first responders to help customers in distress. In the current economic climate, the NALC Food Drive is likely making more valuable contributions to the well-being of less fortunate citizens than in past years.

From the record, it is not known how many such random encounters occur or to what extent in such cases the actions of a postal employee are the sole or proximate cause of a positive outcome. Nor is it known whether postal employee heroics are infinitesimal in relation to the countless similar acts of other bystanders, reported or otherwise. Nevertheless, every such incident of should be celebrated to promote an even higher sense of social and community responsibility and to preserve a civil society. The same can be said of encouraging carriers to be alert to mail piling up in a residential mailbox or other circumstances that might suggest that an elderly delivery customer who subscribes to the Carrier Alert program should be contacted by responsible social service agencies.

It is undisputed that in its several decades of existence, the Carrier Alert program has resulted in some social benefit (NALC Library Reference N2010-1/14), even if it is unknown how many addresses are served or with what frequency matters are referred to local social service agencies. Tr. Vol. X at 2850. The Postal Service also concedes that the more time each day and the more days each week that letter carriers are (paid to be) out on the street delivering mail, the greater the likelihood that they may randomly encounter situations that provide opportunities for them to act in civic-minded ways that benefit persons in distress. The annual one-day NALC Food Drive is but one of numerous commendable charitable redistribution programs. The Postal Service is committed to seeing it continue.

That being said, random acts of heroism, the monitoring of Carrier Alert

subscribers, or the fact that the annual one-day NALC Food Drive is currently held on a Saturday have no bearing on whether the service changes under review in this docket conform to the policies of title 39 United States Code. The Postal Service is not chartered or equipped to provide routine auxiliary police, fire and/or rescue services. While society may derive some benefit from the random acts of alert and socially conscious postal employees or the organized programs summarized above, title 39 does not establish the Postal Service as an extension of either the Social Security Administration or the Department of Health and Human Services. The NALC Food Drive has apparently always been held on a Saturday. However, stand-alone charitable organizations that operate year-round and that arrange for regular donation pick-ups on weekdays appear to know something about the abilities and preferences of donors to act charitably during the week that the NALC and the Postal Service have yet to discover. See Tr. Vol. X at 2865-72, 2878-79.

D. The Testimony Of Public Representative Witness Brown Provides No Basis For Concluding That The Changes Will Lead To Inadequate Service.

Public Representative witness Oregon Secretary of State Kate Brown's testimony (PR-T-1) expresses concern about the impact of the planned service changes on state and local government electoral processes that rely on the mail. However, her concerns do not amount to substantial evidence that the planned service changes would result in less than adequate levels of service within the meaning of 39 U.S.C. § 3661.

1. Witness Brown finds the Postal Service's attention to timely return of ballots commendable.

Voting By Mail is an increasingly more widespread option being offered by some state and local jurisdictions, either as a principal method of casting electoral ballots, or as an option for citizens to vote early or absentee in lieu of reporting to a designated polling place on Election Day. PR-T-1 at 6-7; Tr. Vol. IX at 2609-10. Approximately half of Oregonians use Voting By Mail; the other half prefers to drop off their completed ballots at designated collections points. Tr. Vol. IX at 2626.

The timely delivery of completed ballots is as important to the Postal Service as the timely delivery of all other important First-Class Mail. Witness Brown's testimony gives evidence that Voting By Mail does not work to perfection,²⁹ but she emphasizes that postal officials and local electoral officials can and do work closely throughout Oregon to ensure that mail service "above and beyond the call of duty" increases the timely receipt of ballots by local elections boards on Election Tuesday. Tr. Vol. IX at 2608-09, 2624, 2686-88.

2. Any risk of late delivery of ballots can be minimized by the combined efforts of informed stakeholders

One of witness Brown's concerns about the planned postal service changes appears to relate to the elimination of the pick-up of single-piece First-Class Mail from postal collection boxes and outgoing processing of such mail on Saturdays. In today's six-day environment, many (but not all) blue collection boxes are designated for regular collection on Saturdays and the mail from those boxes is inducted that day in outgoing single-piece mail processing operations.

²⁹ Tr. Vol. IX at 2698.

The same treatment is given to single-piece mail left by customers for pick-up by their letter carriers on their delivery routes on Saturdays.

In today's six-day environment, mail deposited in a collection box (with scheduled Saturday pick-up) after the last pick-up that day is not swept from that box or processed until the following (non-holiday) Monday.³⁰ In the planned five-day environment, no regular collections would be made on Saturdays, resulting in no regular collections of any boxes over the weekend.³¹

Witness Brown is concerned that the elimination of Saturday collections will discourage participation in the electoral process. Tr. Vol. IX at 2639. Her testimony raises the specter of some unknown number of voters reacting to the elimination of Saturday collections by choosing not to vote at all, rather than (1) mailing their ballots before Saturday, (2) mailing them on Monday, (3) continuing to deposit them on Saturdays for pickup and processing on Monday, or (4) arranging for them to be taken to a designated ballot collection point. While the prospect of any person being so easily discouraged from voting is distressing, witness Brown's testimony provides no basis for concluding that the number of such easily discouraged voters is significant, or that a significant number of such easily discouraged voters would be inclined to give up altogether rather than pursue one or more of the reasonable available options.

Although approximately one-third of Oregon ballots arrive in the 48 hours

³⁰ Likewise, mail left by customers in their mail receptacles for pick-up by their letter carriers on Saturdays will not get picked up until Monday if it is placed in the receptacle for pick-up on Saturday after the carrier has delivered to that address.

³¹ Since there already are no regular Sunday collections.

before the Election Tuesday deadline (Tr. Vol. IX at 2694), the data accompanying witness Brown's response to DBP/PR-T1-1 (Tr. Vol. IX at 2642-81) indicate that voters tend to rely more heavily on deposit of ballots at designated collection points as Election Tuesday draws near, with approximately only 10 percent of ballots cast arriving by mail either on Monday or Election Tuesday. These numbers suggest that relatively few ballots overall are deposited in the mailstream on the Saturday preceding Election Tuesday for delivery on Monday in the current six-day delivery environment.

Given that almost all completed ballots are being mailed from locations in a particular county to the elections board in that county, almost all such ballots are intra-Sectional Center Facility First-Class Mail pieces with a one-day service standard. If Oregon voters wait until the day before Election Tuesday to mail their ballots, the Postal Service concedes that a small percentage of ballots whose processing is initiated that Monday may not be delivered in time to be counted on Election Tuesday. However, that possibility exists today in the six-day delivery environment.

One might argue that the future elimination of Saturday collections may have the effect of increasing the possibility that ballots deposited in blue collection boxes on Saturday (but not processed until Monday in the five-day environment) will not be delivered on time on Election Tuesday – that such First-Class Mail ballots will lose the “cushion” of an extra day to make it across the county. That possibility cannot be denied, but there is no basis for concluding that a significant number of such ballots would be adversely affected, or

assuming that the Postal Service and local elections board will not be able to effectively communicate to voters/postal customers to encourage mailing before the posted last collection box pick-up times on the Friday before the election to preserve the current cushion.

As indicated at pages 10-11 of USPS Library Reference N2010-1/1, the Postal Service has identified various options for working with local elections boards to communicate with voters to maximize the effectiveness of the mailstream as a vehicle for voting in the five-day environment. Given the advantages of Post Office Box and Caller Service delivery, the 28 Oregon counties that have ballots delivered to street addresses might wish to confer with the eight counties that use Post Office Box addresses to more fully understand the benefits to the electoral process that can be realized. See Tr. Vol. IX at 2632. Oregon county elections board provide voters ready access by phone or Internet to information regarding the locations of ballot collection points in their home counties where they can arrange to have their ballots hand-delivered up until the 8:00pm deadline on Election Tuesday³² and incentives to either mail or turn their ballots in as soon as possible. Tr. Vol. IX at 2694.

3. There is no probative or substantial evidence of a material replacement ballot mail problem.

Public Representative witness Brown testifies that Oregon ballots are required to be mailed to voters 14 to 18 days in advance of Election Tuesday. Tr. Vol. IX at 2690. She expresses concern about the timely delivery of

³² Tr. Vol. IX at 2626-27, 2693. *Also see, Response of Public Representative's Witness Brown to Questions on Several Vote by Mail Matters Posed at the September 14, 2010 Hearing (September 21, 2010).*

replacement ballots mailed by county elections registrar to voters who have spoiled or misplaced the ballot they originally received. She points out that all such ballots must be placed in the mail at least five calendar days before Election Tuesday.³³ Understandably, it is important that such ballots be delivered quickly so that anxious voters can exercise their right to participate in the rapidly approaching election. However, the record is devoid of any information indicating the number of such replacement ballots that may be mailed out during any given election cycle or in close proximity to the five-day deadline. See Tr. Vol. IX at 1201.³⁴ Accordingly, without diminishing the importance of any particular voter's opportunity to exercise their right to vote, it should be emphasized that there is no evidentiary basis for concluding that this is a significant issue overall, or that significant numbers of voters are deprived of the opportunity to vote on account of a late-delivered replacement ballot.

4. Local jurisdictions must accept responsibility for the consequences of their choices.

It is noteworthy that intra-Oregon First-Class Mail service standards are either one or two delivery days after acceptance. USPS-RT-3 at 2; Tr. Vol. 11 at 3321. In contrast, depending on the origin and destination 3-digit ZIP Codes, the service expectation for Standard Mail can be as little as three and as many as eight days. See <http://ribbs.usps.gov/index.cfm?page=modernservice> . If elections boards exercise the option of mailing replacement ballots via Standard

³³ Response of Public Representative's Witness Brown to Questions on Several Vote by Mail Matters Posed at the September 14, 2010 Hearing (September 21, 2010).

³⁴ See *also* Response of Public Representative's Witness Brown to Questions on Several Vote by Mail Matters Posed at the September 14, 2010 Hearing (September 21, 2010).

Mail as opposed to First-Class Mail, the choice of Standard Mail may have positive consequences for the county government's budget, in light of the price differential between the two products. Given the different delivery service expectations associated with that price differential, others may view such a choice as a penny-wise, pound-foolish reduction in the time allotted to citizens to complete a ballot and return it by First-Class Mail – especially if a replacement ballot is involved and it was mailed out to the voter at or near the five-day Oregon deadline. The Postal Service can relate to other government agencies that embrace the challenge of providing economical and effective customer/voter service at a time when fiscal pressures have rarely been so extreme. Whether a local jurisdiction uses Standard Mail or First-Class Mail, whatever product is chosen, the Postal Service will strive to meet the days-to-deliver service expectation for that product. But, in judging whether the planned reductions in Saturday single-piece First-Class Mail collection and outgoing processing could have an adverse impact on the ability of replacement ballot voters to complete and return replacement ballots in time to be counted, the Commission should be mindful that mail product choices made by local governments in sending out replacement ballots may be the controlling factor.

5. Witness Brown's second-hand anecdote is overwhelmed by the weight of witness Starr's EXFC data.

In support of her concerns about the planned service changes, witness Brown testifies that she is informed by one county elections official that it typically takes five or six days for mail to go to and from such remote locations in Oregon as Klamath Falls and Nyssa. Tr. Vol. IX at 2689. She refers to completed ballots

being returned by voters (*Id.*) as well as replacement ballots being mailed to voters five days or more before Election Tuesday (*Id.* at 2688-90). Completed ballots are sent by voters using First-Class Mail. It is not clear from witness Brown's testimony to what extent replacement ballots are sent via First-Class Mail or Standard Mail. For purposes of argument, the Postal Service will assume that the choice varies from county to county.

In any event, service standard achievement is not necessarily as imperfect as selective anecdotes in service changes cases are prone to suggest. Based on the surrebuttal testimony of Postal Service witness Melissa Starr (USPS-RT-3) and data from the External First-Class measurement system operated by IBM Consulting Services, it seems reasonable to infer that it is unlikely that intra-Oregon First-Class Mail between rural origins and destinations *ordinarily* takes five to six days in transit (Tr. Vol. 11 at 3323), notwithstanding suggestion by the Klamath Falls registrar to witness Brown. This is so, even if the occasional piece of intra-Oregon First-Class Mail inexplicably misses its service standard by a wide margin. Tr. Vol. 11 at 3325-26.

If witness Brown's concern about intra-Oregon mail typically taking five or six days relates to replacement ballots, it might be fair to presume that the typical replacement ballot mailing transaction is intra-county in nature, where the service Standard Mail service standard is 3 days. 39 C.F.R. § 121.3(b). In the odd circumstance where a replacement ballot might be going from one remote corner of Oregon to another with corresponding service standards, the county's choice of Standard Mail to send the replacement ballot at or near the five-day mailing

deadline could result in a mail piece being delivered within the applicable Standard Mail service standard, but leave the voter with little time to complete or return the ballot on time. Accordingly, as indicated earlier, counties sending replacement ballots must make careful choices. The Postal Service agrees with witness Brown that it is important that the “collaborative partnership”³⁵ between the Postal Service and local elections boards continue at a higher level so that citizens in a five-day postal environment can obtain maximum benefit from the opportunity to Vote By Mail. The partners may need to review the critical differences between First-Class Mail and Standard Mail service standards, and the advantages of using First-Class Mail for items that are time-sensitive and extremely important to recipients.

- E. Public Representative witness Luttrell’s central assertions are largely misguided, unsubstantiated and/or contrived

The testimony of Public Representative witness Edward Luttrell (PR-T-2, Tr. Vol. X at 3007) appears to have been intended to demonstrate that the planned service changes would have a materially unfair impact on different groups of postal customers whose interests warrant special consideration by the Commission as it reviews the applicable statutory service criteria. As demonstrated below, some of witness Luttrell’s claims lack substantial evidentiary support, others reflect a lack of understanding of the proposed changes and some suffer from a lack of credibility altogether.

³⁵ Tr. Vol. IX at 2688.

1. Broadband Internet access is not a consideration affecting the planned service changes

Part of witness Luttrell's concern appears to be premised on the misperception that the Postal Service is motivated to streamline its delivery functions on the basis that Internet access has reached a sufficient saturation level as to provide a reasonable substitute or supplement for mail service, allowing the Postal Service to reduce delivery frequency. Tr. Vol. X at 3010. To rebut this misperception, witness Luttrell points to statistics indicating that broadband Internet penetration of rural households lags behind the levels for urban households (Tr. Vol. X at 3009-10). He then asserts that remote and rural household would suffer disproportionately as a result if a reduction in postal delivery frequency to street addresses were implemented. *Id.* at 3010.

First, it should be emphasized that household broadband (or any type of) Internet penetration was not a factor in the Postal Service's determination that the time has come to adjust delivery frequency to street addresses. Broad generalizations about urban and rural household broadband Internet penetration are inherently risky, as the phenomenon can vary significantly from jurisdiction to jurisdiction and among 5-digit ZIP Codes in a particular mail processing plant's service area, irrespective of any rural/suburban/urban attributes. The accelerated diversion into electronic communications media of messages that, in days gone by, would have been sent by mail contributes to the precipitous systemwide revenue and cost trends that drive the Postal Service to pursue aggressive operational and cost streamlining, including adjustment to the frequency of delivery to street addresses. The Postal Service is not ceding its

role in the communications marketplace, but merely exercising the authority granted by title 39, United States Code to adjust its operations and services to the very stark market and financial realities that it faces now and that it expects to face in the future.

2. Witness Luttrell provides no evidence that the changes result in discrimination against rural customers or preference for urban customers.

Witness Luttrell testifies that the National Grange has adopted a resolution in support of the retention of universal Saturday delivery of mail. Tr. Vol. X at 3008. He claims to summarize concerns often raised and debated on the delegate floors of state and national conventions, but offers no insight into the what informed those debates. Tr. Vol. X at 3009. Because the National Grange does not survey its members, he is unable to provide the Commission much in the way of any empirical or nuanced information regarding the varied postal experiences, concerns or needs of the membership or rural postal customers generally. *Id.* at 3038. Instead, they are represented in monolithic fashion.

The Postal Service's planned changes are consistent with the mandate to serve patrons in all areas and render service in all communities, and to provide a maximum degree of effective and regular postal services to rural communities and small towns where post offices are not self-sustaining. 39 U.S.C. § 101(a), (b). The Postal Service is responsible for maintaining an efficient system for collection, sortation and delivery. 39 U.S.C. § 403(b)(1). Its mandate is to provide ready access to essential services in accordance with reasonable economies of scale 403(b)(3).

In doing so, the Postal Service must avoid undue or unreasonable discrimination among mail users and granting undue or unreasonable preferences to any mailers. 39 U.S.C. § 403(c). In developing the service change plan being reviewed in this docket, the Postal Service has considered the interests of all mailer users and has avoided treating them differently based on whether they live in densely populated urban centers or in remote rural areas. Accordingly, the planned change in delivery frequency is the same for urban and rural street delivery customers who currently receive delivery six days a week. Reasonable adjustments to delivery days will be made to the extremely remote rural routes that presently receive delivery fewer than six days per week. Tr. Vol. II at 418; response of witness Granholm to Chairman's Information Request No. 6, Question 2. There will not be Saturday Post Office Box delivery changes, Saturday mail collection and processing operational differences, or Saturday retail access changes based on the urban or rural character of any local service area, as a result of the plan under review being implemented. To the extent that any residential customer depends on the Postal Service more than another, whether what distinguishes those customers is household income or household location, the service changes at issue in this docket do not change that equation.

3. Witness Luttrell provides no evidence of disproportionate adverse impact on rural residential customers.

At page 3011 of Tr. Vol. X, Mr. Luttrell expresses concern about "a small minority of critical items that farm and rural customers regularly purchase by mail order" that "cannot effectively be delayed in order to meet basic needs"

His testimony reveals that the National Grange has not surveyed its members to

assess the degree of impact on rural residents or any time-sensitivity involved in such shipments. *Id.* at 3058-59. Accordingly, he can only report that members have “expressed concerns” (*Id.* at 3058) related to the impact of the elimination of Saturday delivery to street addresses and that his father has muttered under his breath about the potential impact of the elimination of Saturday delivery. *Id.* at 3064. When pressed to elaborate about the potential adverse consequences of the elimination of Saturday delivery to street addresses on pharmaceutical shipments, he reports from personal observation that regular shipments arrive four-to-five days after orders are placed and concedes that shipments can be scheduled to meet recurring or anticipated needs. *Id.* He also acknowledges the availability of expedited postal and non-postal services for use in emergencies. Tr. Vol. X at 3041.

Witness Luttrell provides evidence that rural areas tend to be populated by much higher percentages of persons who are self-employed than in urban/suburban areas. Tr. Vol. X at 3039, 3054-55. However, to the extent that self-employment in rural areas is correlated with living on or in close proximity to the land on which one pursues agriculture, it would seem that rural residents are more likely to receive mail delivery where or in close proximity to where they also work. Such customers would seem to be more likely to avoid missing a home delivery Monday through Friday and, arguably, might be better able to adjust to the elimination of Saturday delivery than city cousins more likely to be employed at locations away from where their residential mail delivery occurs Monday through Friday.

4. Witness Luttrell provides no evidence of disproportionate adverse impact on rural business customers.

At pages 3010-11 of Tr. Vol. X, witness Luttrell expresses concern about the impact that the planned service changes could have on rural businesses. He characterizes them as relying “disproportionately” on six-day postal services and the “predictability” of six-day delivery. While Saturday delivery to street addresses will be curtailed, six-day postal retail service will continue. Accordingly, it is not clear how rural businesses that supposedly disproportionately rely on six-day retail services will be affected more than other business customers.

Regarding “predictability,” witness Luttrell testifies that businesses:

like to know what is going to happen. They want to know that if they put the mail in the box on Saturday morning at 8:00 a.m. that it is going to go out that day.

Id. at 3076. The testimony of Postal Service witness Kearney (USPS-T-11) explains the Postal Service’s comprehensive plans to educate and inform residential and business customers about the service changes it will implement. Assuming changes in collection boxes pick-up time are posted in a timely fashion, Witness Luttrell does not provide a basis for concluding that there would still be a significant number of businesses in the five-day environment that would still not know “what is going to happen” to mail put in a regular blue collection “box on Saturday morning at 8:00a.m” compared to what is going to happen if it is placed in that same box before the final posted Friday p.m. collection time.

Witness Luttrell alludes to the legal significance of postmarks and the protections afforded by mail fraud statutes (*Id.* at 3011), but he concedes that

there are complementary forms of date verification (*Id.* at 3036) and that fraud protection can also be found in non-postal statutes (*Id.* at 3035). His testimony fails to explain or provide any evidence of how the planned changes in postal services reduce the vitality of postmarks or the ability of rural customers to be protected from fraud.

He testifies that rural small businesses such as family farmers “can not absorb the extra time costs of visiting local post offices, delays in delivery of payments or products critical to their businesses. However, he concedes that he is unable to quantify what these “extra time costs” might be. *Id.* at 3038. He also offers no basis for implying that there would be a materially lesser impact on businesses not in rural areas. He offers no estimate of the percentage of payments currently delivered to farm residences that arrive on Saturdays, or the percentage of such deliveries that, in the five-day environment, would not be delivered until the following Monday, or what the adverse consequence, if any, would be. The same dearth of evidence applies to his expression of about critical product shipments.

A key feature of the service changes under review is what does not change: Post Offices will be open on Saturdays to accept mail as they do today. Accordingly, on Saturdays small farmers will continue to be able to take advantage of the Postal Service’s “[i]nnovative, single and small unit batch parcel post, package and bulk mail pricing policies” to which witness Luttrell refers at page 3011 of Tr. Vol. X, and will not be driven to rely on postal competitors on those days, to the extent that such non-postal services are even available on

Saturdays.

5. Witness Luttrell's claims of adverse impact on electoral processes are either unsubstantiated, demonstrably mistaken or contrived.

The Postal Service values the important role it can serve in facilitating participation in the wide variety of elections and referenda described in witness Luttrell's testimony at pages 3012-14 of Tr. Vol. X. Accordingly, it takes seriously any suggestion that the planned postal service changes could materially affect participation in electoral processes operated by governments and other local entities, many of which he asserts are required by law to conduct voting by mail. *Id.* at 3013.

Witness Luttrell asserts that:

Nearly all public or private elections still have critical deadlines that must be met for individual votes to count. Reducing mail delivery service from six days to five days risks disenfranchising some voters because of missed delivery or postmarking deadlines. This is especially true in two critical areas *that have been identified by Grange members*.

Id. (Emphasis added). Witness Luttrell indicates that many of the entities about whose elections he is concerned having voting deadlines based on a postmark date. *Id.* at 3013, 3036. It is undisputed that in the five-day delivery environment, postal customers will no longer be able to drop a letter in a designated collection box or mail chute on Saturday and expect it to be postmarked that day. However, they will continue to be able to have such letters postmarked on Saturdays at postal retail windows. USPS-T-1 at 15, n.8. As part of its comprehensive communications plan, the Postal Service plans to proactively inform mail users and elections officials of the service changes and

adjustments that may need to be made to their customs and practices. See USPS-T-11 and USPS Library Reference N2010-1/1 at 10-11. The Postal Service cannot guarantee that 100 percent of First-Class Mail will be delivered in accordance with service standards. Accordingly, voters who rely on the mail bear some responsibility for acting expeditiously to ensure that their ballots have the highest possible opportunity of getting postmarked or delivered arriving on time. The Postal Service is committed to doing its part to educate its customers. Responsible elections board are expected to communicate to voters the information that they need in order get their votes counted. If all three stakeholders form the sort of “collaborative partnership” envisioned by Public Representative witness Brown (Tr. Vol. IX at 2688), the unfortunate occurrence of ballots being disqualified on the basis of a late postmark or late delivery can be kept to an absolute minimum to allay witness Luttrell’s concerns.

The first group of voters described by witness Luttrell as having been *identified by Grange members* as warranting special consideration are “members of our Armed Services who are serving their nation far away from home.” Tr. Vol. X at 3013-14. Witness Luttrell asserts that the planned service changes will “disenfranchise” these voters. *Id.* at 3013. However, when confronted by the service changes under review in this proceeding one-by-one, witness Luttrell back-pedals and redefines a “disenfranchised” voter as one who may feel uncertain and, based on that uncertainty, may decide not to vote. *Id.* at 3029-30. Witness Luttrell never makes clear how or why a member of the United States Armed Services overseas with a ballot in hand would feel uncertain and be

discouraged from voting because of the Postal Service's plans to eliminate:

Saturday collection box pick-up in the United States (where overseas soldiers are not located); or

Saturday outgoing processing of single-piece First-Class Mail dropped off at a Post Office on Saturday in the United States (where overseas soldiers are not located).

At page 3029 of Tr. Vol. X, witness Luttrell urges the Commission to examine the planned service changes and render an opinion regarding their compatibility with the requirements of the federal Military and Overseas Voter Empowerment (MOVE) Act, Public Law 111-84 (October 28, 2009). The MOVE Act establishes timelines that states must meet in distributing local election ballots to citizens overseas, including military soldiers, to ensure that they have a reasonable opportunity to vote. The Act encourages states to explore alternative hard-copy and electronic methods by which ballots can be transmitted and returned. To the extent that local elections officials choose to rely on the mailstream for the distribution and return of overseas ballots, the Postal Service stands ready to process and transmit outgoing and incoming ballots in a manner consistent with the mail product chosen for transmission. As indicated in USPS Library Reference N2010-1/1 at pages 10-11, the Postal Service plans to encourage local elections boards (especially those with Saturday ballot deadlines) to arrange to have Vote By Mail ballots mailed directed to a Post Office Box address to which mail will be delivered on Saturdays. That would not seem to be asking too much of local governments and other entities who owe their security to voters who stand poised every day to make the ultimate sacrifice overseas.

A United States soldier who drops a paper ballot in the overseas military mailstream for transfer into the United States Postal Service mailstream for delivery stateside to an elections board at home with the expectation that it will arrive in time to be counted places a great deal of faith in the U.S. military and the Postal Service and deserves to have that faith rewarded. In large measure, the efficacy of the MOVE Act depends on actions and choices of local elections officials that are beyond the control of the Postal Service and the scope of the Commission's section 3661 advisory authority. Accordingly, the Postal Service encourages Public Representative witness Luttrell to work with Public Representative witness Brown to ensure their state of Oregon is doing all that it reasonably can to eliminate barriers to participation in Oregon elections by citizens of that state who are protecting this nation's interests overseas.

The second group of voters described by witness Luttrell as having been *identified by Grange members* as warranting special consideration by the Commission are "minority rural voters" in jurisdictions that are "still affected by special federal protections administered by the U.S. Department of Justice under the provisions of the Voting Rights Act of 1964." *Id.* at 3013-14. He emphasizes:

It was an issue that was brought to our attention, and we included it because with our organization, we are very concerned about individuals.

Tr. Vol. X at 3065. Despite insisting under oath that the riveting specter of Black voters in the South being disenfranchised by the Postal Service in violation of the Voting Rights Act was *raised by Grange members and brought to our attention*, witness Luttrell ultimately confesses under cross-examination that the idea of inserting so incendiary a claim in his testimony was conceived by the National

Grange’s “legislative director at the time” who is now “no longer available” Tr. Vol. X at 3066-67. He ultimately concedes that the organization was aware of no facts or circumstances to suggest the existence of any such adverse impact. *Id.* at 3070.

F. NNA Witness Cross’s Testimony Is Unsubstantiated And Based On Misperceptions of the Postal Service’s Plan

National Newspaper Association witness Al Cross describes the purposes for his testimony (NNA-T-2, Tr. Vol. IX, at 2735) as being to show that the Postal Service’s plan to end street delivery on Saturday and make related service changes would (1) “exacerbate the decline of many rural communities” and reduce their quality of life, and (2) “have a major negative effect on rural newspapers, and thus on the communities they serve.” Tr. Vol. IX at 2738. Mr. Cross makes various assertions to support these conclusions, but his assertions lack grounding in any probative or substantial evidence and are at times based on misperceptions of the Postal Service’s plan.

1. Witness Cross’s testimony demonstrates his unfamiliarity with the Postal Service’s plan.

Witness Cross’s testimony demonstrates an unfamiliarity with both the Postal Service’s plan and the legal mandates and requirements that the plan seeks to fulfill. Under title 39, the Postal Service is obligated to provide prompt, reliable, and efficient services to patrons in all areas and to all communities in order to bind the nation together. 39 U.S.C. § 101(a). In regard to rural America, the Postal Service is tasked with providing a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post

offices are not self-sustaining. 39 U.S.C. § 101(b). The Postal Service's plan ensures that the Postal Service will continue to fulfill these requirements while making much-needed changes to ensure the viability of its services.

Witness Cross's testimony implies that there is a Constitutional or otherwise statutory requirement for "quality postal service" and that street delivery on fewer than six days per week "is not quality postal service." Tr. Vol. IX at 2739. While the Postal Service certainly agrees that it is required to provide "quality postal service," Mr. Cross has not pointed to any Constitutional or statutory definition of "quality postal service" to substantiate his assertion that the Postal Service's five-day delivery plan falls short of "quality postal service." In response to an interrogatory asking him to substantiate his assertion that "quality postal service" equals "six-day delivery," Mr. Cross states that, "[a]s someone who has lived in rural America all of my life, I don't need statutes or regulations to tell me what 'quality postal service' is." Tr. Vol. IX at 2753. While Mr. Cross might not need statutes and regulations, the question at issue in this docket is whether the Postal Service's planned service changes would satisfy its responsibilities under statutory law set forth in title 39. Mr. Cross makes assertions about the Postal Service's legal obligations while, to all appearances, is uninformed about title 39 and its requirements.

Further, Mr. Cross's testimony demonstrates that he is unfamiliar with the Postal Service's plan, thus indicating that he either has not reviewed it or has not reviewed it carefully. For example, Mr. Cross states that "[a]s I understand the proposal, small rural post offices that get their mail from rural carriers would not

open on Saturdays because no mail would be delivered to the office on highway contract routes.” Tr. Vol. IX at 2742. The first page of the Postal Service’s Request plainly states that “Post Office and other retail locations, as well as business mail entry units, will continue to provide service, sell products and accept mail Monday through Saturday,” and that “Saturday delivery of mail to Post Office boxes will continue.” Request of the United States Postal Service for an Advisory Opinion on Changes in the Nature of Postal Services, Docket N2010-1, at page 1. The testimony of Postal Service Witness Pulcrano states that:

Post Offices and other retail locations will continue to sell products and services on Saturday. They will accept mail on Saturday, though some of it may not be processed until Monday. Saturday Post Office box delivery service will continue.

USPS-T-1 at page 4. The testimony of Postal Service Witness Granholm states that “[c]urrent Post Office Box delivery and retail access will remain intact on Saturday for customer convenience.” USPS-T-3 at page 3. See also Tr. Vol. II at 510, and the response of witness Granholm to Question 2 of Chairman’s Information Request No. 7 (July 12, 2010).

In response to an interrogatory requesting the basis for his statement that small rural post office would not be open on Saturdays, Mr. Cross cites an Associated Press article summarizing the Commission’s field hearing in Rapid City SD. Tr. Vol. IX at 2757. During cross-examination, the Postal Service noted to Mr. Cross that there is a single sentence in that article that discusses the issue:

Some of [sic] smaller post offices get all of their daily mail brought to them

by a rural carrier, [rural carrier] Evensen added, so eliminating Saturday delivery would also mean mail is not delivered to boxes.

Tr. Vol. IX at 2776-77. Mr. Cross was asked to confirm that this sentence was the sole source of his statement that rural post offices would not be open on Saturdays; Mr. Cross replied in the affirmative.

To begin, the news article sentence relied on by Mr. Cross discusses only the delivery of mail to Post Office boxes, so it is unclear why he extrapolated from the sentence to conclude that some small rural post offices would not be open at all on Saturdays. Further, the fact that Mr. Cross relied on this somewhat random sentence to the exclusion of all of the plain statements to the contrary in the Postal Service's Request and in Postal Service witnesses' testimony calls into question whether he ever seriously reviewed the Postal Service's proposal in the first place and undermines the credibility of the assertions he makes regarding the proposal in his testimony.

2. Witness Cross' testimony lacks grounding in evidence.

Mr. Cross's reliance on a single quote from a news article for the assertion discussed above raises a larger issue regarding his testimony. By and large, Mr. Cross's testimony is based either on his own opinions or on quotes from various individuals. Perhaps because of his background in journalism, much of Mr. Cross's testimony reads like a journalism piece, with various individuals quoted for their opinions. During his cross-examination, Mr. Cross stated that his:

intention was to get a representative sample, and not a statistically valid sample, but a representative sample of newspapers, both weeklies and dailies, in varied areas of the country to find examples that would illustrate the impact of five day delivery.

Tr. Vol. IX at 2780. Asked to explain what he meant by a “representative sample,” Mr. Cross indicated that he meant that his sample included “a diversity of locales.” Tr. Vol. IX at 2780. Mr. Cross confirmed that he did not conduct or direct any opinion surveys on the views of rural residents regarding the Postal Service’s plan. Tr. Vol. IX at 2781.

Thus, Mr. Cross’s practice of quoting individuals for various propositions in his testimony does not mean that the quoted individuals’ views are at all representative of category of mailers or recipients, or that he has presented a fair cross-section. The quotes are included because the quoted individuals’ views coincide with those of Mr. Cross, and the quotes are “representative” only in so far as they originate from diverse geographic locations. Therefore, the quotes cannot be considered as reliable, probative and substantive evidence to support the sweeping propositions in Mr. Cross’ testimony.

One piece of evidence that Mr. Cross marshals to support one of his claims clearly does not support the claim at all. In response to an interrogatory regarding the “scheduling” of deliveries for Saturday, Mr. Cross states:

The percentage of deliveries scheduled for Saturdays is unknown, but mail-order prescription services specifically offer Saturday delivery, and some rural areas have problems with theft of drugs from mailboxes (<http://www.katu.com/news/13755507.html>).

Tr. Vol. IX at 2756. During cross-examination, Mr. Cross was asked to explain how the news article provide support for any proposition in his testimony. Tr. Vol. IX at 2769-2770. Quite clearly, the article concerns the theft by drug addicts of mailpieces that contain either money or materials (such as bills, bank statements, etc.) that can be used to steal money via identity theft, in order to finance the

illicit procurement of drugs. There is no basis for Mr. Cross' assertion that the article concerns the theft of mail order pharmaceutical shipments from residential mailboxes. When cross-examined, he steadfastly defended his misinterpretation of the news article. Tr. Vol. IX at 2771-2773. Inevitably, he conceded: "I don't see a specific reference to the theft of drugs here." Tr. Vol. IX at 2772. Mr. Cross's reliance on information that clearly does not support his propositions, and his subsequent persistence in asserting otherwise, undermine his credibility and demonstrate how unsubstantiated his testimony is.

3. Witness Cross's own evidence contradicts his basic claims.

During his cross-examination, Mr. Cross produced information that contradicts the fundamental claim of his testimony. His fundamental claim is that rural communities depend on Saturday editions of their local newspapers; the elimination of street delivery on Saturdays will mean the loss of the Saturday newspaper editions; and this loss will lower the quality of life in rural communities and exacerbate rural communities' decline. In his testimony, Mr. Cross never quantifies the number of newspapers or communities that will be affected in this manner. During cross-examination, Mr. Cross stated that, based on his research, there are roughly four thousand rural newspapers, and that 446 of them publish a Saturday edition. Tr. Vol. IX at 2799. However, he provides no aggregate or relative circulation data to help put these numbers in clearer context. Nor does he provide any data regarding how many of these 446 rely on postal delivery today. Of those that do, he provides no information regarding their ability to adjust to the elimination of Saturday street delivery, or what the

varying impacts on different publishers might be. Mr. Cross provides no reliable, probative or substantial evidentiary basis for his dire predictions. His claim that “the end of Saturday mail would make a large number of rural Americans second-class citizens” (Tr. Vol. IX at 2739) seems overwrought.

G. NNA Witness Heath Demonstrates A Lack of Credibility And His Testimony is Unsubstantiated.

As described below, NNA Witness Max Heath (NNA-T-1) makes accusations against Postal Service officials and employees that are demonstrably incredible and call into question whether any weight should be accorded to any of his testimony. Further, the central assertion of Mr. Heath’s testimony is that the effect of the Postal Service’s five-day delivery proposal on rural newspapers will be far more widespread than the Postal Service has stated, but Mr. Heath fails to offer any evidence to support his assertion. In response to Postal Service interrogatories requesting such evidence, Mr. Heath’s response is simply that the NNA does not collect such information. Given that Mr. Heath’s testimony is unsubstantiated by evidence, it cannot be assigned any meaningful weight.

1. Mr. Heath’s claims regarding Postal Service officials’ characterization of the five-day delivery proposal as a “*fait accompli*” are demonstrably incredible.

At Tr. Vol. X at 2892, Mr. Heath states that, as the NNA’s senior Mailers’ Technical Advisory Committee (MTAC) representative, he has “attended briefing sessions by Postal Service executives on the reasons the end of Saturday delivery is fore-ordained.” Mr. Heath was asked Mr. Heath to identify the

executive who remarked that Saturday delivery is foreordained and the briefing sessions at which they made such remarks. Tr. Vol. X at 2921. In response, Mr. Heath states:

Well, frankly, they are too many to list, and impossible to track, the mindset was so pervasive within USPS. Virtually every briefing I ever heard talked in terms of “when” rather than “if.” It was only when someone in the group, like me, pointed out that Congress had to make the decision, did postal managers ever say otherwise.

Id. Despite the statements having been made allegedly at “virtually every briefing” Mr. Heath attended, he specifically cites only one executive, Postal Service witness Pulcrano. *Id.* Mr. Heath says that Mr. Pulcrano made the statement at the Periodicals Operations Advisory Committee prior to MTAC meetings in 2009 and 2010.

According to Mr. Heath’s telling, then, Mr. Pulcrano would have stated at these meetings that the elimination of Saturday delivery was foreordained and would have failed to mention Congress and the Commission’s roles until Mr. Heath or someone else pointed them out. Mr. Heath’s claims are easily refuted by Mr. Pulcrano’s surrebuttal testimony (USPS-RT-4; Tr. Vol. 11 at 3096 *set seq.* and its associated library reference, USPS-LR-N2010-1/20,. For example, Tab A of that library reference contains Mr. Pulcrano’s August 13, 2009 MTAC PowerPoint presentation. Mr. Heath claimed to have been present. Tr. Vol. X at 2925. Slide 10 of that presentation plainly shows that Mr. Pulcrano covered the roles of the Commission in providing an advisory opinion on five-day delivery and Congress in ultimately deciding whether five-day delivery would proceed. *Id.* at Slide 10. Mr. Heath’s claim is refuted and lacks credibility.

2. Mr. Heath's claims regarding the Shelbyville, Kentucky Post Office are demonstrably incredible.

During oral cross-examination, Mr. Heath was repeatedly asked for other specific examples of the "too many to list" instances of Postal Service officials or employees characterizing five-day delivery as, in his words, a "*fait accompli*." Tr. Vol. X at 2954-2960. After repeatedly being unable to cite specific examples, Mr. Heath stated that the Post Office in his hometown of Shelbyville KY made changes to mailing requirements apparently in anticipation of five-day delivery. Tr. Vol. X at 2958. When asked whether Post Office employees had told him that the changes were connected with the five-day delivery proposal, Mr. Heath stated that "they never did really give us a good reason" and, consequently, that "[i]t's my belief that that [the five-day delivery proposal] had at least something to do with it [the changes required by the Shelbyville Post Office]." Tr. Vol. X at 2960.

As part of his surrebuttal testimony, Mr. Pulcrano provides a copy of a letter dated April 23, 2010, from the Manager of Postal Operations in Shelbyville to the newspaper company for which Mr. Heath was a consultant, explaining why the changes referenced by Mr. Heath during his cross-examination were made. The correspondence shows that the issue was one of Sarbanes-Oxley compliance; nowhere does the correspondence mention the five-day delivery proposal. Again, then, Mr. Heath's claims are demonstrably not credible. Mr. Heath's penchant for substantially deviating from what can be proven true undermines his credibility as a witness.

3. Apart from his lack of credibility, Mr. Heath fails to substantiate his assertions with reliable, probative and substantial evidence.

Mr. Heath states that the impact of the loss of Saturday delivery will be “much more widespread” than the Postal Service has stated. Tr. Vol. X at 2893. As evidence, he briefly describes the effect that the loss of Saturday street delivery will have on five rural newspapers. As is the practice of Mr. Cross, the other witness for NNA, Mr. Heath provides quotes from officials at these newspapers to buttress his claims.

However, nowhere in his testimony does Mr. Heath attempt to quantify the number or proportion of rural newspapers that will be affected in the way that the five newspapers he lists say they might be affected. He does not quantify the number or proportion of rural newspapers that publish a Saturday edition. He does not quantify the number or proportion of rural newspapers that utilize the Postal Service for delivery. He does not even provide rough estimates. The only point in his testimony where he attempts to provide quantification is when he states that “29% of respondents to our query indicated they would create a new carrier delivery force, despite preferences otherwise, and pull both Periodicals and Standard Mail out of the mailstream.” Tr. Vol. X at 2896. Mr. Heath does not explain what the query was, who the query was directed to, or how many of the organizations queried responded. Without this information, the 29 percent figure means is virtually meaningless.

When asked to provide quantified information in interrogatories, Mr. Heath’s response is simply that the NNA does not collect such information. Tr.

Vol. X at 2928-2930. If the effect of the loss of Saturday delivery will be “much more widespread” than the Postal Service has stated, it is reasonable to assume that Mr. Heath and the NNA would survey NNA members to provide estimates of the number of NNA members that would be affected. They have not done so, despite bearing the burden of producing evidence substantiating Mr. Heath’s assertions. Without any substantiation, Mr. Heath’s claims cannot be assigned any meaningful weight.

VI. Conclusion

As demonstrated above, the service changes under review in this docket are founded upon a rational plan for maintaining adequate postal services while stabilizing postal finances. The changes are the product of a proper balancing and consideration of relevant statutory objective and policies. The record evidence questioning the service changes falls short of providing a basis for concluding otherwise. The Postal Service respectfully requests that the Commission issue an advisory opinion that satisfies the due process requirements of section 3661 and affirms that the resulting changes in the nature of postal services conform to the policies of title 39, United States Code.

Respectfully submitted,

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